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Enforcement Accomplishments Report

FY 1992

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Printed on Recycled Paper

The FY 1992 Enforcement Accomplishments Report was prepared by the Compliance Evaluation Branch within the Office of Enforcement. Robert Banks was the principle editor and coordinator for this report. Bill Watt helped to edit and prepare graphics for the report. Information contained in the report was supplied by the EPA Regional Offices, Headquarters program offices and the Office of Enforcement.

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I. FY 1992: Strong Performance in Traditional Enforcement Activity, Record Setting Penalties and Fines, and Implementation of a Cross-Program/Multi-Media Enforcement Perspective

FY 1992 was a very successful year for both the Environmental Protection Agency (EPA) and State enforcement programs. EPA and the States maintained high aggregate levels of judicial and administrative enforcement activity, and new records for Federal civil and criminal penalties and fines were established (see Section II for detailed information). At the same time, EPA continued to fully implement the targeted enforcement approaches that are called for in its Enforcement Four-Year Strategic Plan.

Significant progress was made in the broad effort to integrate a cross-program/multi-media approach into all stages of the inspection and enforcement program. This will enable the Agency to better pursue its goal of additional public health and environmental protection results, deterrence, and efficiency which could not be achieved through the use of traditional single-media approaches alone. Notable achievements in FY 1992 include the effort to strengthen the cooperative relationship between EPA and the States through issuance of the Multi-Media Addendum to the *Policy Framework on State/EPA Enforcement Agreements*. The Multi-Media Addendum establishes procedures for enhanced multi-media enforcement by Federal and State authorities and involves States more fully in the process of identifying and implementing annual national enforcement initiatives. In FY 1992, national initiatives were undertaken to address specific pollutants, industries, and geographic areas which present a national risk from the standpoints of human health, the environment, and maintenance of the integrity of Agency regulatory programs.

EPA's long-term commitment to cross-program/multi-media enforcement is a reflection of its desire to better integrate health and ecological risks into inspection targeting and case selection. While these concepts apply in single-medium cases as well, cross-program/multi-media enforcement is intended to result in comprehensive identification and remediation of problems at a facility. Cross-program/multi-media inspections also have the potential of better focusing senior management in the regulated community on the broad range of environmental compliance issues, encouraging a more holistic approach to significant environmental problems.

EPA's Regional Offices have strengthened operating procedures and organizational structures to support cross-program/multi-media enforcement. Initially viewed by many in the Agency with reservation and concern, this process is now being implemented with enthusiasm in the spirit of Total Quality Management.

Criminal enforcement continues to be the fastest growing component of the Agency's enforcement effort with Resident Agent Offices opening in Houston, Los Angeles, Buffalo, St. Louis, and Miami. The program supports program-specific enforcement priorities and is expected to be increasingly useful in supporting cross-program/multi-media and international enforcement efforts and in addressing interstate violations.

The Office of Criminal enforcement is working closely with the media programs to implement the new Sentencing Guidelines for Organizational Defendants (primarily corporations) convicted of environmental crimes. Implementing these guidelines will require extensive Regional program technical input to develop recommended conditions of corporate probation including restitution, remediation, and compliance-related relief. The goal is smooth coordination within EPA so that timely support can be provided to sentencing judges and probation officers.

During FY 1992 the Agency crafted the Criminal Enforcement Addendum to the *Policy Framework on State/EPA Enforcement Agreements* which was issued in final form in January 1993. The Addendum will improve coordination and communications among Federal, State, and local law enforcement units. Its major provisions include the designation of one or more intra-State contact to serve as a focal point for exchanging information regarding the status of criminal investigations and cases, cross referral of cases, technical support and training, and coordination of State/Federal civil and criminal proceedings.

EPA's rapidly developing Federal Facility Enforcement program had many notable achievements during FY 1992, many of which are highlighted in the pages of this Report. The program is working to protect public health and the environment through expeditiously cleaning up and ensuring compliance at Federal hazardous and radioactive waste sites. EPA is also establishing a framework that ensures the Federal government is held accountable to the public for its environmental record. In recognition of the public's vital interests, EPA will work to further engage the public with the Federal sector in the decision-making process for management and clean-up of environmental contamination at Federal facilities.

A key to implementing EPA's new and enhanced approaches to enforcement is the ability to readily look at patterns of noncompliance within or across environmental programs. To meet this requirement, EPA developed a computer capability which links information from over ten Agency mainframe computer systems. Known as Integrated Data for Enforcement Analysis (IDEA), this computer capability utilizes EPA's powerful mainframe computer capacity to allow EPA enforcement personnel to engage in an interactive analysis of EPA's compliance and enforcement data. This capability provides EPA staff with the ability to structure enforcement analyses based on areas of potential concern including industrial sector, pollutants, corporate structure, and/or geographic sector.

II. Environmental Enforcement Activity

A. Federal Judicial and Administrative Enforcement Activity

During FY 1992, EPA worked to institutionalize the strategic approaches called for in the Agency's Enforcement Four-Year Strategic Plan through through cross-program/multi-media and multi-facility enforcement actions which seek to bring about comprehensive solutions to complex interrelated environmental problems. With this perspective, EPA intends to achieve additional public health and environmental protection results, deterrence, and efficiency which might not be achieved through use of traditional single-media approaches alone. In FY 1992, EPA fully implemented modifications to its activity counting methodologies that track and account for civil referral activity. These adjustments were recommended by an Agency-wide workgroup and are intended to account for the greater magnitude of cross-program/multi-media actions, and to remove any accounting-related disincentives to bringing more complex cases.

EPA is developing other enforcement indicators intended to provide a more complete and balanced picture of the quality and magnitude of its enforcement efforts. In this and other sections of this report, more information is provided on EPA's use of Administrative Penalty Orders, which are an effective complement to civil judicial enforcement tools, along with information on the value of injunctive relief and Supplemental Environmental Projects, which complement information reported on civil penalty assessments. These are new areas of reporting and, unlike other types of quantitative information included in this report, comparative historical data are not available for all indicators.

B. Federal Civil Judicial Enforcement

In FY 1992, EPA referred 361 civil judicial cases to the Department of Justice, down eight percent from FY 1991, and right at the annual average for the previous five years. Program-specific increases were recorded for the Safe Drinking Water Act (up 320%), Clean Air Act (up 18%), and Resource Conservation and Recovery Act (up 18%). Clean Water Act civil referrals declined by 28 cases, however, use of Clean Water Act Administrative Penalty Order (APO) authorities increased by 82 cases, an increase of 56% over the FY 1991 level. Agencywide, issuance of APOs increased by 167 cases from FY 1991, an increase of 13%. The Office of Enforcement expects that the trend toward greater use of APO authorities will continue, and in the future the civil judicial referral and APO indicators will need to be viewed together in assessments of civil enforcement activity levels.

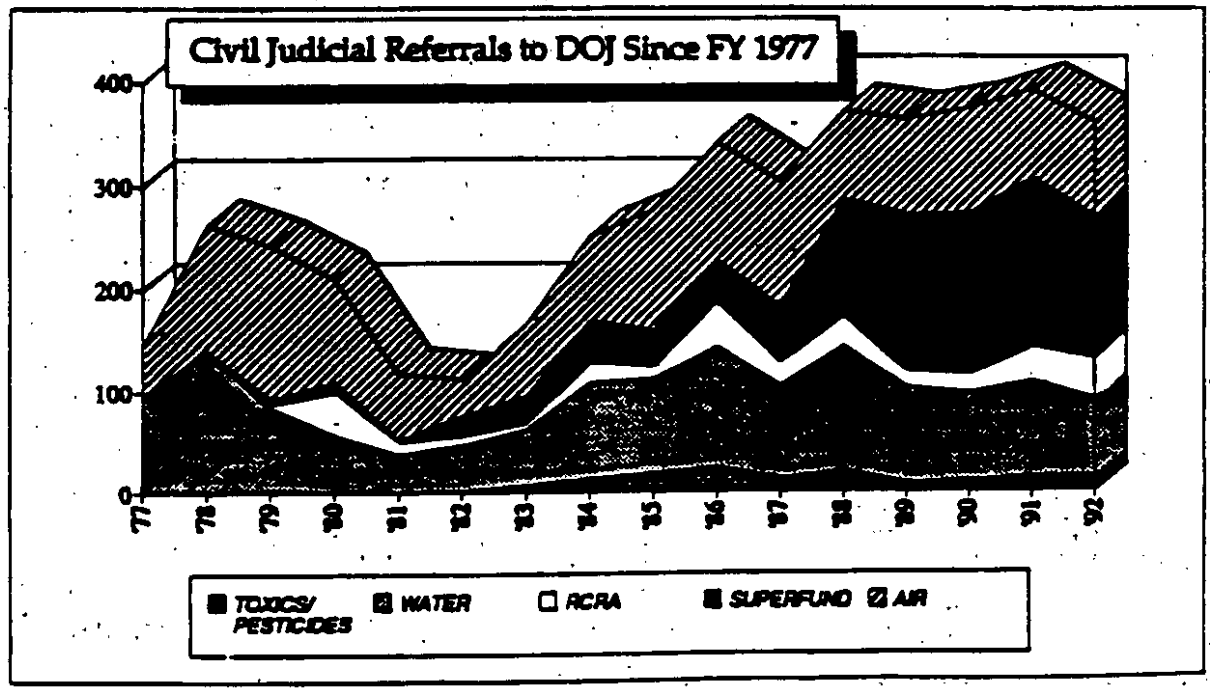


Illustration 1

C. Monitoring Judicial Consent Decrees

The high levels of civil judicial enforcement activity over the last several years have resulted in accompanying large increases in the number of consent decrees which the Agency has entered into with violating facilities. EPA places high priority on ensuring that defendants live up to the obligations assure that are spelled out in consent decrees. At the end of FY 1992, the Agency reported that 815 active judicial consent decrees were in place and being actively monitored to ensure compliance, an increase of 129 (up 19%) from FY 1991 and four times the number reported six years ago. Where noncompliance with a decree is found, EPA may initiate proceedings with the court to compel the facility to live up to its agreement and seek penalties for such noncompliance. EPA initiated actions against more than 100 violating facilities during the year including the referral of 19 cases to DOJ for enforcement of the consent decree, up five from FY 1991.

D. Federal Criminal Judicial Enforcement

EPA's criminal program established records in FY 1992 for most categories of activity. New records included referring 107 cases to DOJ (the previous record was 81 in FY 1991), bringing charges against 150 defendants (the previous record was 104 in FY 1991), and the number of months of jail time to which defendants were sentenced with 1,135 months (the previous record was 963 months in FY 1991). Sixty-four criminal cases concluded during the year, in which 99 defendants were convicted. In addition, 44 of the defendants convicted were sentenced to incarceration.

Incarceration and probation are key parts of the criminal program, including serving a strong deterrent role. Probation is very effective because in the event that an individual commits another crime (not limited to environmental crimes), the provisions of the probation normally call for the automatic imposition of the prison sentence that was suspended in lieu of probation. Since 1982, individuals have received prison sentences for committing environmental crimes totaling 355 years, and 991 years of probation have been imposed.

EPA's increased emphasis on the criminal enforcement program over the past four years, coupled with passage and implementation of the Pollution Prosecution Act of 1990, has significantly raised the profile of criminal enforcement both within EPA and in the regulated community. By the end of FY 1992, EPA had increased the number of criminal agents by 38 percent over the FY 1988 level. This modest additional investment in agents has yielded significant increases in most of the key outputs of the criminal program. As Illustration 2 shows, the number of defendants charged with criminal environmental violations, the amount of criminal months sentenced in cases successfully prosecuted, and the amount of fines resulting from prosecutions have increased dramatically.

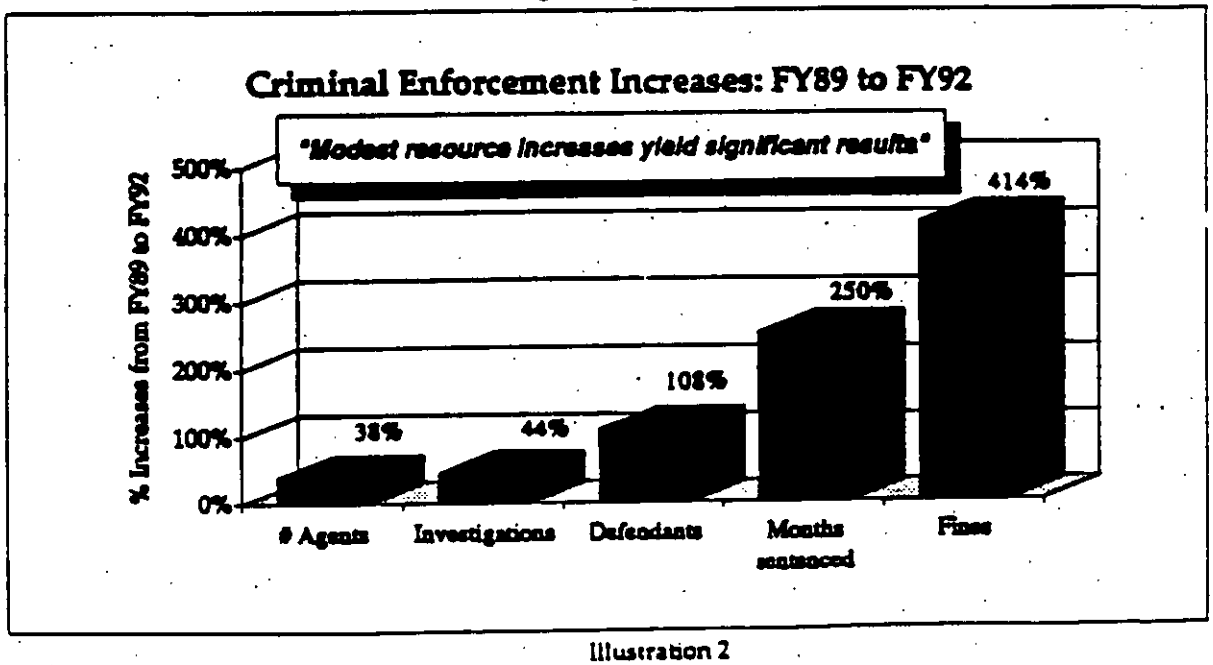


Illustration 2

E. Administrative Enforcement

EPA posted its fourth highest annual total for administrative enforcement activities in FY 1992 with 3,667 actions. The Agency record of 4,136 was set in FY 1989. The totals for FY 1992 demonstrate that although judicial actions (both civil and criminal) have been the most visible indicators of EPA's performance, other indicators need to be considered to fully ascertain EPA's effectiveness in enforcing environmental laws and regulations. In recently enacted or reauthorized statutes, Congress has expanded EPA's authority to use administrative enforcement mechanisms to address violations, compel regulated facilities to achieve compliance, and assess penalties. Many of these administrative authorities provide for injunctive relief and penalties that are comparable to those which can be obtained through civil judicial enforcement. EPA programs issued 1,434 administrative penalty orders (APOs) in FY 1992, an increase of 167 (13%) from the FY 1991 estimate of 1,267 (EPA has not routinely disaggregated APOs from other types of administrative actions. A best estimate of FY 1991 activity is provided for purposes of comparison).

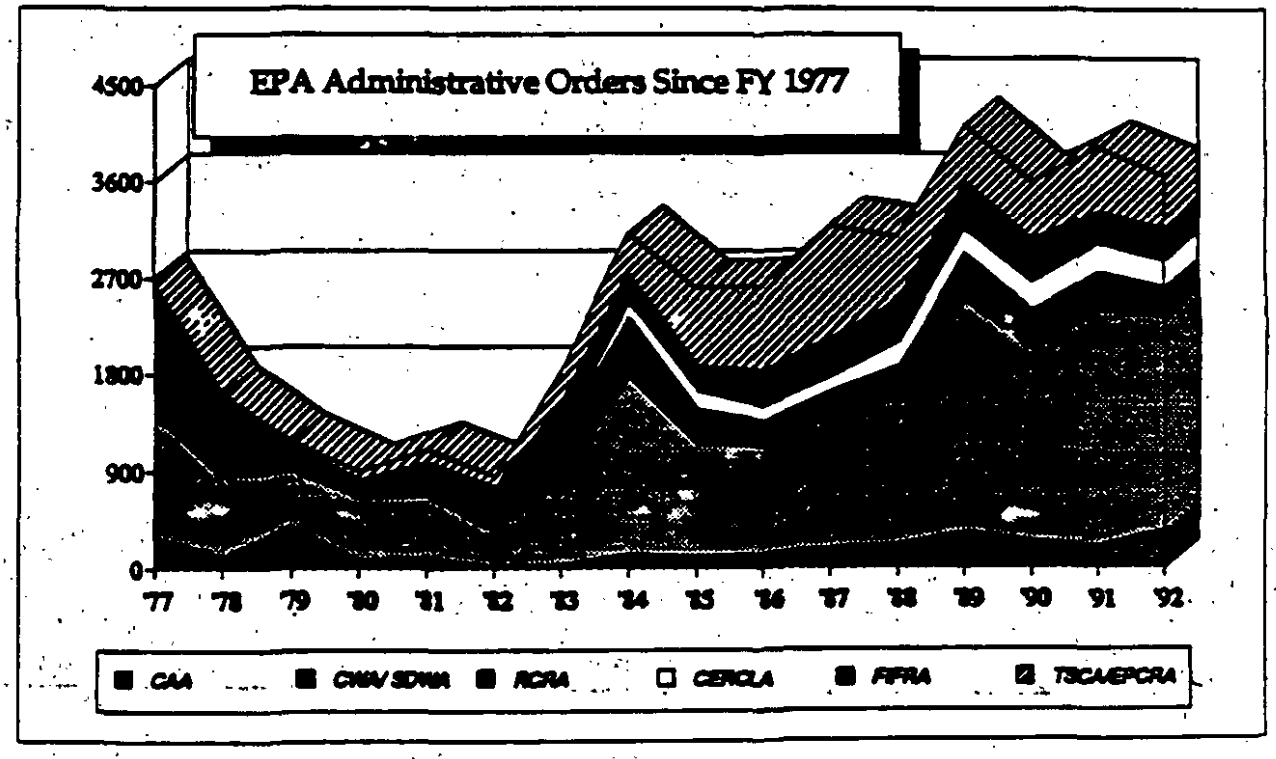


Illustration 3

F. EPA Contractor Listing

In FY 1992, twenty facilities were added to EPA's List of Violating Facilities (List) under the authorities provided to EPA by Clean Air Act § 306 and Clean Water Act § 508, to bar facilities that violate clean air or clean water standards from receiving Federally funded contracts, grants or loans. Federal agencies are prohibited by statutory mandate from entering into contracts, grants or loans (including subcontracts, sub-grants or sibilance) to be performed at facilities owned or operated by persons who are convicted of violating air standards under CAA §113(c) or water standards under CWA §309(c) (and involved in the violations), effective automatically on the date of the conviction. Facilities which are mandatorily listed remain on the List until EPA determines that they have corrected the conditions giving rise to the violations. Twenty facilities were listed in FY 1992 based on criminal convictions – matching the record set in FY 1990. Three facilities were removed from the List in FY 1992. Since FY 1986, 94 facilities have been placed on the mandatory list. Sixty-nine facilities remained on the List as of the end of FY 1992.

Facilities with records of civil violations may also be listed, at the discretion of the Assistant Administrator for Enforcement, upon the recommendation of certain EPA officials, a State Governor,

or a member of the public (referred to as discretionary listing). A facility may be recommended for discretionary listing if there are continuing or recurring violations of the CAA or CWA after one or more enforcement actions have been brought against the facility by EPA or a state enforcement agency. Facilities recommended for discretionary listing have a right to an informal administrative proceeding. In FY 1992, one proposed discretionary listing remained active. Also, the possibility of discretionary listing helped to achieve settlements in numerous other civil enforcement cases.

G. Federal Penalty Assessments

Delaying or foregoing capital investment in pollution controls, as well as failure to provide resources for annual pollution control operating expenditures, can allow undeserved economic benefits to accrue to a regulated entity. As part of the effort to deter noncompliance, EPA's enforcement programs have developed penalty policies designed to assess penalties which recover any economic benefit that a noncomplying facility has realized, and assess additional penalties commensurate with the gravity of the violation(s).

In FY 1992, $78.7 million in civil penalties were assessed, an all-time record ($50.7 million in civil judicial penalties, a record, and $28.0 million in administrative penalties). The overall increase was in part a result of a substantial increase in stationary source Clean Air Act penalties (from $7.4 million in FY 1991 to $19.9 million in FY 1992). Since 1974, EPA has assessed $320.8 million in civil and judicial penalties, with two-thirds of this total being assessed in the last three years. Criminal fines totaled $62.9 million in FY 1992, including the record $22 million fine levied in the Exxon Valdez case. Since 1984, $109.3 million in fines have been levied in EPA criminal cases.

In FY 1992, $22.0 million in Clean Air Act civil penalties were assessed ($19.9 million for stationary source violations and $2.1 million for mobile source violations); $23.1 million in Clean Water Act penalties were assessed ($17.8 million in civil judicial penalties and $5.[illegible] million in administrative penalties); over $8.2 million in Toxic Substances Control Act penalties were assessed (all but $5,000 assessed administratively); $13.6 million in Resource Conservation and Recovery Act penalties were assessed ($5.9 million in civil judicial penalties and $7.7 million in administrative penalties); and $6.7 million in CERCLA civil judicial penalties were assessed. The Federal Insecticide, Fungicide, and Rodenticide Act and Safe Drinking Water Act programs are largely delegated to the States; however, EPA assessed $1.1 million, and $481 thousand, respectively, under these statutes. The Toxic Release Inventory program assessed nearly $2.8 million. The remaining $700 thousand was fairly equally distributed among the Emergency Planning and Community Right-to-Know Act (EPCRA), Wetlands, and Marine and Estuarine Protection programs.

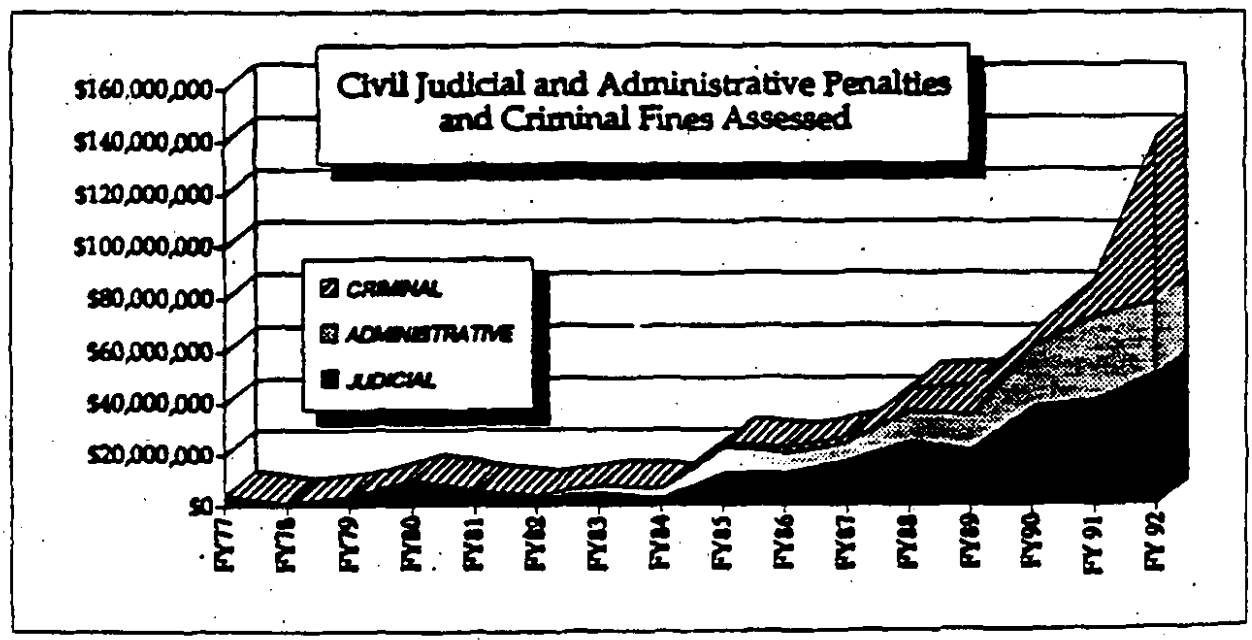
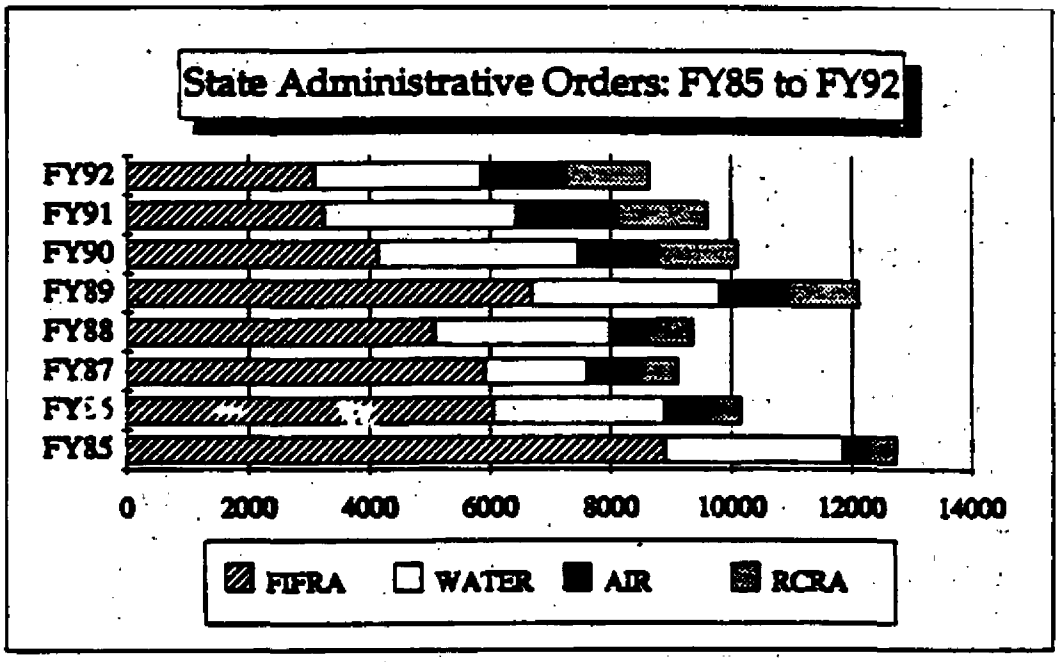


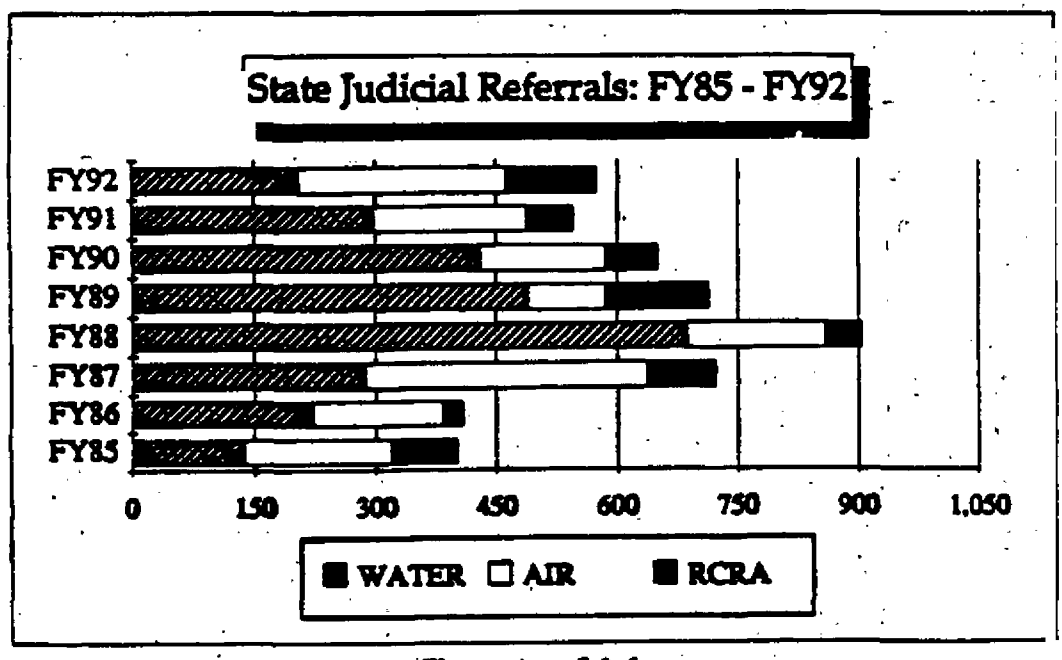
Illustration 4

(For further information on EPA penalties, see the National Penalty Report in the Appendix.)

H. State Judicial and Administrative Enforcement Activity

Several hundred thousand facilities are subject to environmental regulation, and the job of ensuring compliance and taking action to correct instances of noncompliance with federal laws is entrusted both to EPA and to the States through delegated or approved State programs. EPA and the States must rely on a partnership to get the job done, with State environmental agencies shouldering a significant share of the nation's environmental enforcement workload. In FY 1992, the States referred 574 civil cases to State Attorneys General and issued 8,643 administrative actions to violating facilities. The major portion of State administrative actions occur in the FIFRA and water programs, 36% and 32% respectively. (Additional data on State administrative orders and referrals is contained in the Appendix.)





Illustrations 5 & 6

I. Supplemental Environmental Projects

The analysis of FY 1992 settlement data indicated that the EPA Regional offices negotiated 409 Supplemental Environmental Projects (SEPs) during the year worth an estimated $50.1 million. Approximately 48% of the SEPs were in the category of Public Awareness (virtually all negotiated by the Air Mobile Sources compliance program), 29% were in the category of Pollution Reduction (the majority negotiated by the TSCA compliance program), and 15% were in the category of Pollution Prevention (virtually all negotiated by the EPCRA §313 compliance program). More detailed information on SEPs can be found in the National Penalty Report which is included in the Appendix of this report.

J. Cross-Program/Multi-Media Enforcement and Targeted Enforcement Initiatives

While maintaining strong traditional enforcement programs, EPA stressed implementation of the cross-program/multi-media perspective and use of targeted and innovative enforcement approaches. The Agency's primary goal in implementing these approaches it to obtain additional public health and environmental protection results, greater deterrence, and efficiency which might not be achieved through use of traditional approaches alone. Highlights of Regional performance in these areas include:

- **Cross-program/multi-media inspections and enforcement actions** - The Regions implemented the cross-program/multi-media perspective through use of workgroups which targeted cross-program/multi-media inspections, conducted case screening on single media enforcement cases, and coordinated case management against facilities with cross-program violations. FY 1992 was the first year for which the Agency has collected data on cross-program/multi-media activities, and the data are very encouraging. In FY 1992, the Regions conducted 407 consolidated (simultaneous) cross-program/multi-media inspections and 183 additional coordinated inspections (inspections conducted in follow-up to concerns raised during an inspection by another program). In all, 1,496 individual program compliance assessments occurred in these 590 inspections. During FY 1992, the Agency initiated 64 cross-program/multi-media administrative enforcement actions, addressed 44 discrete program violations through civil judicial referrals to DOJ, and completed 54 cross-program/multi-media settlements which grew out of a single media case.

- **National Targeted Enforcement Initiatives** - In FY 1992. EPA conducted targeted national multi-media enforcement initiatives focused on violations of benzene standards and the regulations regarding three industry sectors: pulp and paper manufacturing; organic chemical manufacturing; and primary metals (metal manufacturing and smelting). During the year, a number of enforcement cases resulted from these initiatives. The pulp and paper initiative included five judicial actions and settlements and three civil administrative actions; the primary metals effort included four judicial complaints, three judicial settlements, and a civil administrative action, and the organic chemical initiative resulted in three new administrative actions and an administrative consent order. These cases will result in more than $18 million in civil and criminal penalties. To date, the benzene effort has resulted in actions involving violations of the CAA, RCRA, and CERCLA. Cases include seven administrative enforcement actions and two civil judicial actions.

III. Major Enforcement Litigation and Key Legal Precedents - Protecting Public Health and the Environment through Enforcement

This chapter provides highlights of major FY 1992 litigation which support Agency enforcement priorities and demonstrate innovative approaches in the enforcement process. FY 1992 was an exciting and challenging year for EPA's enforcement effort. The Agency continued implementation of the new approaches, described in the Enforcement Four-Year Strategic Plan and the Enforcement in the 1990's Project, by which Federal and State governments could better promote compliance with, and effective deterrence against violations of, environmental laws. Cases are listed alphabetically.

National Multimedia Enforcement Initiatives

The Office of Enforcement's (OE) multi-media enforcement initiatives ensure that EPA most effectively implements multi-media\cross-program enforcement to achieve public health and environmental protection through integrated use of all available resources. In FY 1992, OE conducted national multi-media enforcement initiatives focused on violations of benzene standards and the regulations governing three specific industry sectors.

On August 5, 1992, EPA and DOJ announced a number of benzene-related enforcement actions. EPA selected benzene as the target of an enforcement initiative, in part, based upon the 1990 Toxics Release Inventory, ranking benzene fifth among carcinogens in terms of total pounds released to the environment. The benzene initiative resulted in enforcement actions under the CAA, RCRA, and CERCLA. On behalf of EPA, DOJ lodged two significant civil judicial actions for benzene-related violations. First, in an action against Chevron, U.S.A.'s Philadelphia, PA petroleum refinery, the largest penalty for violations of hazardous air pollutant standards for benzene was obtained. An additional benzene-related civil judicial case was settled with Sharon Steel's Monesson, PA plant, and EPA filed seven administrative actions against chemical and petroleum companies for violations of the Underground Storage Tank regulations.

On September 10, 1992, EPA and DOJ announced the filing of number of industry-specific enforcement actions focused on violations of statutes in three industry sectors — pulp and paper manufacturing, metal manufacturing and smelting, and organic chemical manufacturing. The initiatives were based on each industry's history of significant non-compliance and large amounts of reported releases or transfers of toxic substances to the environment.

In FY 1992, EPA entered into enforcement settlements with pulp and paper companies that violated environmental statutes that will result in more than $18 million in civil and criminal penalties. Most significant was the $13 million settlement, including criminal and civil penalties, against the Dexter Corporation (see below) for violations of the CWA and the RCRA. The $7.2 million civil penalty assessed against Dexter for violations of the CWA is the largest fine ever assessed for violation of a water pollution permit. One-half of the $7.2 million penalty will go to the State of Connecticut which joined the EPA as a plaintiff in the action against Dexter. Dexter also agreed in the consent decree to install equipment to treat both non-toxic and toxic pollutants, to prepare a spill prevention plan, to perform extra monitoring and reporting, to clean-up hazardous waste areas at the facility and perform a multi-facility environmental compliance audit.

Another significant agreement involving corrective measures designed to help ensure future compliance is a modified consent decree requiring the Louisiana Pacific Corporation's Samoa, California, pulp mill to install a new chlorine-free bleaching process by 1995. Under the agreement, the plant would become the first plant in the nation to achieve 100% production of chlorine-free pulp. The pulp and paper initiative included five civil judicial actions and settlements and three civil administrative enforcement actions.

Pursuant to the primary metals enforcement initiative, EPA filed five new civil judicial and administrative enforcement actions

and three settlements involving metal manufacturing and metal smelting facilities. This included a settlement with the Wheeling-Pittsburgh Steel Corporation in which it agreed to pay a $2 million dollar civil penalty for CWA violations.

The EPA also filed three new administrative enforcement actions and an administrative settlement involving industrial organic chemical manufacturing facilities. A civil penalty of $488,200 is sought in an administrative complaint filed against Monsanto Chemical Company for 23 alleged violations of the RCRA and applicable Massachusetts regulations. In addition, the Agency issued an Administrative Order on August 6, 1992, requiring the Union Camp Corporation in Dover, Ohio, to perform a facility assessment and to begun to remediate hazardous waste violations.

Clean Air Act Enforcement

In FY 1992, this program's activities centered upon implementation of the Clean Air Act Amendments of 1990. The Clean Air Act (CAA) program regulates the emission of both toxic and criteria pollutants from both stationary (factories, plants, utilities) and mobile (auto) sources. Stationary source air toxics litigation centered upon violations of the National Emissions Standards for Hazardous Air Pollutants (NESHAPS), especially those involving asbestos and benzene. Stationary Source enforcement of the National Ambient Air Quality Standards (NAAQS) for the criteria pollutants involved violations of regulations for volatile organic compounds (VOCs), sulfur dioxide and particulates. Mobile source litigation emphasized violations of the lead phasedown rules, as well those involving fuel switching, volatility, and additive requirements.

Stationary Source Program

U.S. v. A. A. Mactal Construction Company Inc. (D. Kan.): This is the first Clean Air Act case in which the court upheld EPA's assertion that the appropriate civil penalty should be determined by first calculating the statutory maximum penalty and then adjusting that amount downward only to the extent each mitigating factor under subsection 113(e) is found to be applicable.

On March 31, 1992, the United States District Court for the District of Kansas issued a decision and order against A.A. Mactal Construction Company, Inc. (Mactal) assessing a penalty equal to the defendant's entire economic benefit of $126,000. This was an action for civil penalties for violations of §112 and §114 of the Clean Air Act, 42 U.S.C. §7412, and the National Emission Standard for Hazardous Air Pollutants for asbestos (Asbestos NESHAP), 40 C.F.R. Part 61, Subpart M at two separate facilities.

Beginning with the statutory maximum, the court proceeded to examine each mitigating factor under 113(e) to reduce the $475,000 calculated penalty. The only factor which reduced the penalty in this case was the economic impact on the violator. Moreover, the court stated that recovery of the economic benefit is "essential and that economic benefit should serve as the floor below which the maximum penalty should not be mitigated."

U.S. v. American Cyanamid Company: This case involves the largest civil penalty ever collected by EPA for construction of a facility without a required PSD permit. In December, 1991, a consent decree was lodged in U.S. District Court providing for a civil penalty of $625,000 for violations of the PSD (Prevention of Significant Deterioration of Air Quality) provisions of the Clean Air Act. The decree also requires Cyanamid to achieve and maintain compliance at its Pearl River, New York facility. Cyanamid's Lederle Laboratories Division had started construction of a PSD-affected facility prior to receiving a PSD permit; it also failed to notify the State, in violation of CAA New Source Performance Standards. After this enforcement action was initiated, a PSD permit was issued, and the company recommenced construction in conformance with its terms.

U.S. v. Arizona Public Service Company (D. Ariz.): In FY 1992, as part of Region IX's "good pollution control practices" initiative, the Region discovered NSPS and SIP violations at a plant owned by Arizona Public Service Company. The company failed to adhere to the NSPS requirements concerning the installation, operation and maintenance of continuous emission

monitors (CEMs) at a fossil-fuel fired utility plant regulated under the New Source Performance Standards (NSPS), and failed to follow good pollution control practices by operating during numerous and routine bypasses of the sulfur dioxide and particulate matter control equipment on some of their boilers. Arizona Public Service Company agreed to pay a $1.3 million civil penalty. The Arizona Public Service Company settlement is the highest penalty ever received for Clean Air Act violations in Region IX. The consent decree requires the company to follow explicit bypass procedures, install and operate CEMs, pass performance tests and apply for all appropriate permits.

U.S. v. Avco Corporation, Textron Lycoming Division et al. (D. Ct., New Haven) U.S. v. Aetna Life Insurance Company, Inc. et al.(D. Ct., Hartford) U.S. v. D'Addario Industries, Inc. et al. (D. Ct., Bridgeport): In FY 1992, EPA Region I entered into settlements in three Connecticut cases involving violations of the Clean Air Act asbestos regulations. Each settlement involved an agreement to pay a monetary penalty and undertake extensive measures designed to ensure future compliance. The three cases are U.S. v. Avco Corporation, Textron Lycoming Division et al., U.S. v. Aetna Life Insurance Company, Inc. et al., and U.S. v. D'Addario Industries, Inc. et al. Among other things, the compliance terms require defendants: to provide detailed notification to EPA prior to any asbestos job; to inspect, sample, and analyze samples for asbestos before working; to ensure proper asbestos training for all workers and supervisors; to designate corporate officials as company-wide asbestos program managers; and to pay substantial stipulated penalties for future violations of the settlement terms or the Asbestos NESHAP. The overall compliance cost to the defendants in each case is estimated to be approximately $185,000.

In Aetna, EPA alleged asbestos violations during a renovation of Aetna's corporate office in Hartford, Connecticut. The other defendants named in the case include Reed and Greenwood Insulation, Inc. and Safety Environmental Control, Inc. The specific violations included failure to adequately wet friable asbestos and, with respect to defendant Reed and Greenwood, violation of a prior-issued EPA administrative order. Under the settlement, the defendants paid a $45,000 fine.

In Avco, EPA alleged violations during renovations at Avco's facility in Stratford, Connecticut, and the William B. Meyer Rigging, Inc. facility in Hamden, Connecticut. Other named defendants include William B. Meyer Rigging, Inc., Asbestos Abatement and Insulation Services, Inc., Logano Trucking, Inc., and Lorene Mattas, Sally Tsiaras, Stephen Lang, and the late Thomas Dolan, Trustees. The alleged violations included failure to provide prior written notice of the renovation to EPA, failure to wet asbestos material adequately during and after stripping, and discharge of visible asbestos emissions to the ambient air. Under the Avco settlement, defendants paid a $120,000 penalty.

Finally, in D'Addario, EPA alleged violations which included inadequate wetting and improper handling of asbestos material as well as noncompliance with a prior-issued EPA administrative order. The violations allegedly took place during two separate renovations carried out at the former Read Department Store and the Old Bridgeport Brass Building, both in Bridgeport, Connecticut. The other named defendants include Mechanics and Farmers Savings Bank, BEZ, Inc., the Estate of F. Francis D'Addario (and named Executors), Environmental Waste Resources, Inc., Statewide Tape Cleaning Services, Inc., David D'Addario, in his individual capacity, and Petco Insulation Company, Inc. In D'Addario the defendants have paid a $140,000 penalty.

U.S. v. Bethlehem Steel (Bethlehem and Johnstown, Pennsylvania (E.D. PA): This case involved the largest Clean Air Act penalty to date, $6.7 million, in settlement over violations at Bethlehem Steel's Bethlehem, Pennsylvania, and Johnstown, Pennsylvania, facilities. EPA's CAA actions against Bethlehem Steel addressed unlawful emissions that presented significant risks to human health and the environment in densely populated areas of Pennsylvania and achieved a fundamental priority of the Agency's Air Toxics program by dramatically reducing emissions of benzene.

Resolved when two partial consent decrees were lodged on March 9, 1992, in the United States District Court for the Eastern District of Pennsylvania, this case has the largest penalty in the history of the Clean Air Act stationary source enforcement program. A cash penalty of

$6.7 million will be paid by Bethlehem for their particulate matter violations of the federally enforceable Pennsylvania State Implementation Plan (SIP) at their coke oven batteries and electric arc furnaces in Johnstown and Bethlehem. Coke ovens are used to transform coal into coke, which is then used in furnaces in the steel making process. Also included in this settlement is $32 million worth of injunctive relief which will return Bethlehem to compliance, plus a Supplemental Environmental Project (SEP) to install Luter-type coke oven doors which will serve to prevent the release of benzene and other air toxics in a manner consistent with the NESHAP recently proposed by EPA for emissions from coke ovens.

The Pennsylvania Department of Environmental Resources is a party to both consent decrees and will receive one-half of the civil penalties in the Johnstown decree and thirty-percent of the penalties in the Bethlehem decree.

U.S. v. Bethlehem Steel (Sparrows Point, Maryland, Plant) (D. Md.): A consent decree was entered on April 24, 1992, resolving a CAA civil enforcement action against Bethlehem Steel Corporation for alleged excess particulate matter emissions from coke oven batteries and the Basic Oxygen Furnace during steel manufacturing at Bethlehem's Sparrows Point, Maryland, plant, in violation of the federally enforceable Maryland SIP.

Earlier in 1992 Bethlehem ceased coke oven operations at the Sparrows Point plant for repairs and possible re-building. Under the terms of the decree Bethlehem has agreed to pay a civil penalty of $3.5 million, to be divided equally between the United States and the State of Maryland. Bethlehem must also comply with all applicable Maryland SIP and/or CAA permit requirements before any construction or resumption of operations of the coke oven batteries.

U.S. v. Corning Inc., Ashahi, Ashahi Glass America, Inc. and Corning Ashahi Video Products. (M.D. PA): The penalty sum in this case is, by far, the largest civil penalty ever obtained in an inorganic arsenic NESHAP case, and is one of the largest civil penalties obtained in any NESHAP case. A consent decree to settle this inorganic arsenic NESHAP case was entered on May 12, 1992, in U.S. District Court. The consent decree requires the defendants to upgrade the electrostatic precipitators serving the glass manufacturing furnaces at the State College, PA plant (by installing automatic voltage controllers, automatic rapper controllers, and a supervisory computer); to develop and implement a detailed operation and maintenance plan; and to conduct certain stack tests and repair and retest if either furnace is found to be out of compliance. In addition, the defendants are required to pay $1,825,000 in civil penalties.

In re: ESSROC Materials, Inc.: On November 13, 1991, Region V filed its first administrative compliance order under the new CAA. This order required ESSROC Materials, Inc. to improve its emission control equipment at its Speed, Indiana, facility by August 1, 1992.

ESSROC had violated New Source Performance Standards for Portland Cement Plants. The §113(A) Order requires ESSROC to complete an exhaustive engineering study on the cement kiln raw roller mill and gaseous distribution through electrostatic precipitator, implement corrective action according to findings of the study, and come into compliance by August 1, 1992. EPA estimates that this work will cost approximately $747,000 and will reduce particulate matter emissions in the air.

Idaho Forest Industries, Inc., Coeur d'Alene, Idaho; Louisiana-Pacific Corporation, Moyie Springs, Idaho; Merritt Brothers Lumber Company, Inc., Priest River, Idaho: Region X settled administrative penalty complaints against three forest product companies in northern Idaho, each of which involves a substantial expenditure by the company for control equipment. The complaints, which were filed as part of EPA's 1992 Clean Air Act administrative penalty cases initiative, alleged that the companies violated the opacity limit of the Idaho State Implementation Plan. The Idaho regulation prohibits emissions of greater than 20% opacity for more than three minutes during any sixty minute period. The cases resulted from EPA inspections conducted in 1991 as part of an EPA study of the effectiveness of Idaho's opacity regulation. The EPA inspections resulted in the issuance of several notices of violation, compliance orders, administrative penalty complaints and judicial referrals and received considerable attention in the Idaho press.

Idaho Forest Industries, Inc., operates several lumber mills, one of which is located in downtown Coeur d'Alene, Idaho. The complaint alleged that emissions from the hogged fuel boiler at this facility exceeded the opacity standard in March and September 1991 and alleged continuing violations under the presumption of continuing noncompliance of §113(e)(2), 42 U.S.C. §7413(e)(2) from September 1992 through August 1992. In a consent agreement and consent order entered on September 1, 1992, the company agreed to an assessed penalty of $67,752. One half of this amount was deferred and ultimately suspended based on the company's agreement to install wet electrostatic precipitators on its facility in downtown Coeur d'Alene and another of its facilities at a cost of $500,000 each. Installation of the control equipment is expected to bring the Coeur d'Alene facility into compliance with the opacity standard and to reduce particulate emissions from both facilities well below state and federal standards.

Louisiana-Pacific Corporation operates a lumber mill in Moyie Springs, Idaho. The complaint alleged that emissions from the hogged fuel boiler at this facility exceeded the opacity standard in June and December 1991 and alleged continuing violations under the presumption of continuing noncompliance of §113(e)(2), 42 U.S.C. S 7413(e)(2) from October 1991 to August 1992. In a consent agreement and consent order entered on October 14, 1992, the company agreed to an assessed penalty of $67,972. one half of this amount was deferred and ultimately suspended based on the company's agreement to install an electrostatic filter bed on the hogged fuel boiler at this facility at a cost of over $150,000. This cost figure includes only the cost of installing the equipment, not the cost of the equipment itself, which the company took from one of its facilities that had ceased operations. Installation of the control equipment is expected to bring the facility into compliance with the opacity standard and to reduce particulate emissions from the facility well below state and federal standards.

Merritt Brothers Lumber Company, Inc., operates a lumber mill in Priest River, Idaho. The complaint alleged that emissions from the hogged fuel boiler at this facility exceeded the standard on June 25, 1991. As a result of a consent agreement and consent order entered on October 30, 1992, the company has paid one half of an assessed penalty of $20,208 in cash; the remaining $10,104 penalty was suspended because the company installed an electrostatic precipitator on the boiler at a cost of $213,881 for purchasing the equipment and installation. This equipment is expected to reduce particulate emissions from this facility below state and federal standards.

U.S. v. Jay Printing Company: This case exemplifies the Agency's commitment to ensuring that defendants comply with the terms of consent decrees resolving EPA enforcement actions. On February 26, 1992, Jay Printing Company of Warwick, Rhode Island, paid stipulated penalties of $167,750 for its violations of a 1989 consent decree resolving an EPA enforcement action against the company for violations of the emission limitations for volatile organic compounds (VOCs) in the Rhode Island State Implementation Plan. Under the 1989 consent decree, Jay paid a civil penalty of $82,342 and agreed to abide by certain VOC emission limits. The decree provided for stipulated penalties for both emission and reporting violations.

In August 1990, Jay informed EPA that it had submitted a number of inaccurate daily VOC emissions sheets in violation of the decree. On the basis of information provided by Jay, EPA determined that Jay violated the VOC emission limits contained in the decree on a total of 40 days from October 1989 through August 1990. For all but two of those 40 days, Jay submitted inaccurate daily emission sheets. Since its self-confession of these violations of the decree, Jay has been in compliance with its emission limits. In response to a demand letter from the federal government, Jay paid stipulated penalties of $167,750 in accordance with the stipulated penalty provisions of the 1989 consent decree.

U.S. v. Public Service Company of Colorado, Inc. (D. Colo.): This Clean Air Act civil enforcement action represents the largest civil cash penalty recovered from a Clean Air Act violator by Region VIII and by the State air program of Colorado. The case involved two separate fossil fuel-fired steam generating facilities (Comanche and Pawnee) owned and operated by the defendant Pubic Service Company of Colorado Inc. (PSCC). In both instances, beginning in 1985 and continuing until 1989, PSCC failed to replace patently faulty pollution control equipment with available proven pollution control technology. By not

replacing the equipment, periodic outages for maintenance were necessary. These cleaning operations, conducted during outages, resulted in massive bursts of particulate emissions. EPA alleged PSCC failed to maintain good air pollution control practices for minimizing emissions.

Under the terms of the consent decree, PSCC agreed to replace the Pawnee facility's faulty pollution control equipment (electrostatic precipitator) with another available pollution control technology (Fiber Filter Dust Collector) at a cost of approximately $66,000,000 by December of 1994. To settle the actions at both facilities, PSCC has agreed to pay a civil penalty of $600,000, of which $440,000 will be paid to the United States Treasury and $160,000 will be paid to the State of Colorado.

U.S. and Commonwealth of Pennsylvania v. USX, Inc.: A consent decree to settle this particulate matter SIP case was entered on January 21, 1992, in U.S. District Court. The Consent Decree provided for the installation of emission controls at a sinter plant at USX's Fairless Hills, PA plant, and requires compliance demonstration and maintenance at the sinter plant, open hearth shop, and blast furnaces. In addition, USX is required to pay $700,000 in civil penalties. Subsequent to its execution of the Consent Decree, USX ceased operation of the sources at the plant covered by the Decree.

U.S. v. James Walsh (W.D. Washington): On November 20, 1991, Judge Thomas Zilly of the U.S. District Court for the Western District of Washington held that James Walsh, the project superintendent for an asbestos abatement company, was liable for asbestos violations during renovations at the Seattle-Tacoma Airport and Pier 52 on the Seattle waterfront. This decision is significant because it is the first time a court has clearly stated that an asbestos worker who has no ownership interest in the asbestos abatement company is personally liable for asbestos violations that he or she causes. The violations alleged were discovered by inspectors from the Puget Sound Air Pollution Control Agency.

A complaint was filed in 1989 against Savage Enterprises, James Walsh and James J. Savage, owner of the firm, for failure to keep asbestos wet until collected for disposal during the renovation activities. Savage Enterprises and James Savage had previously entered into a consent decree with the United States in which Savage agreed to pay a penalty of $5,000. The court assessed a penalty of $3,500 against Walsh after finding that he had no assets. Walsh has appealed this decision to the 9th Circuit Court of Appeals.

U.S. v. Washington State Department of Transportation; McDonald's Corporation; and James M. Pirie Construction, Inc., (Western District of Washington, Seattle, Washington): On August 26, 1992, U.S. Attorney Mike McKay filed a Complaint and partial Consent Decree in the above-named action. EPA alleged that defendants committed violations of the Clean Air Act during a 1987 demolition/renovation of a Seattle facility being remodeled to become a McDonald's fast food restaurant. The partial Consent Decree required McDonald's to pay a civil penalty of $150,000. It also required that McDonald's implement, at all applicable McDonald's franchises in Region X, an extensive internal asbestos control program which includes inspection, sampling, notification, and training requirements if its facilities are renovated or demolished in the future. This matter has a strong Regional enforcement impact, and, as a direct result of the settlement negotiations, McDonald's indicated that it will undertake the asbestos control program activities on a national basis.

In the case at issue, Washington State DOT owns the facility, McDonald's leases the facility, and Pirie Construction Company was engaged in the demolition/renovation activity. The matter remains before the Court for the other defendants. The Complaint alleges that defendants failed to provide pre-demolition/renovation notice, failed to remove friable asbestos containing materials (ACM) from the facility before any wrecking or dismantling that would break up the materials, failed to wet the ACMs when they were being stripped from facility components, failed to keep the ACMs wet until collected, failed to carefully lower the ACMs to the floor rather than dropping or throwing them, failed to deposit ACMs at an appropriate waste disposal site, failed to prevent the discharge of visible emissions to the outside air, and discharged pollutants (ACM and demolition/renovation matter) to waters of the United States.

In the Matter of Wheeling-Pittsburgh Steel Corporation: In this case, the U.S. successfully pursued satisfaction of unsatisfied civil penalty judgments against Wheeling-Pittsburgh for prior CAA (SIP) and RCRA violations at Wheeling-Pittsburgh plants in West Virginia, Pennsylvania, and Ohio, in the context of a Chapter 11 bankruptcy proceeding. The unsatisfied civil penalty totaled $5,086,552 (all of which, except for $17,500, were CAA penalties) and the U.S. recovered 66.9% of that sum ($3,403,457). The terms of the settlement are reflected in an original stipulation approved by the U.S. Bankruptcy Court on May 11, 1989, and in an amended stipulation approved by the Bankruptcy Court on April 26, 1991.

Clean Air Act Administrative Penalty Initiative

On May 20, 1992, EPA announced the coordinated nationwide filing of 52 Clean Air Act administrative penalty cases seeking more than $4 million in penalties. The cases, filed in 26 States and Puerto Rico, enforced a wide variety of Clean Air Act provisions and regulations, including new requirements for continuous emissions monitoring equipment at petroleum refineries, national emissions standards for asbestos, benzene and uranium mining waste piles, and State standards for smoke density and airborne particle emissions. In all, 96 cases were filed during the five months of FY 92 during which the authority to bring these cases existed. In FY 92, twelve administrative penalty cases settled with penalties totaling $413,045.

The initiative was designed to publicize EPA's use of its new Clean Air Act administrative penalty authority, one of several new enforcement tools provided to EPA in the 1990 Clean Air Act Amendments. Publicized through national and regional press releases that were coordinated with a speech given by the Assistant Administrator for Enforcement, the initiative demonstrated EPA's commitment to vigorous enforcement of the Clean Air Act and sent a message of deterrence to regulated sources. Administrative penalty actions, with their streamlined litigation procedures, allow EPA to expend moderate resources on middle-range but important cases, and to reserve more resources for judicial litigation in larger, more complex cases. Accordingly, EPA's new administrative enforcement program ensures that middle-range violations receive a commensurate enforcement response, which in turn results in greater compliance with the Clean Air Act at less cost both to government and to the regulated community.

Multi-Media Benzene Enforcement Initiative

A number of CAA cases were included in the August 5, 1992, cross-media Benzene Initiative. Prosecution and settlement of these cases will result in significant reductions of the amount of this hazardous chemical emitted to the air.

U.S. v. Chevron, U.S.A. (E.D. Pa.): This consent decree received significant attention as part of the August 5, 1992, benzene initiative. Chevron agreed to pay a civil penalty of $1 million and stipulated penalties, the largest benzene NESHAP settlement to date. EPA addressed a sensitive environment, namely a minority community in Philadelphia, thereby promoting environmental equity. This settlement incorporates a plant-wide compliance audit designed not only to establish compliance, but to recommend improvements in training, management structure, and standard operating and maintenance practices to ensure continuing compliance. The recommendations of the auditor will become an enforceable part of the decree.

U.S. v. Sharon Steel Corp. & Monessen, Inc. (Monessen, Pennsylvania) (W.D. Pa.): A consent decree resolving a CAA civil enforcement action against Sharon Steel Corporation (Sharon) and Monessen, Inc. (Monessen) was entered on August 5th as part of the benzene enforcement initiative. The decree addressed alleged violations of the Clean Air Act's National Emission Standard for Hazardous Air Emissions for Benzene Emissions from Coke By-Product Recovery Plants (Benzene Coke NESHAP) at Sharon's Monessen, Pennsylvania, plant. Under the terms of the decree Sharon agreed to pay a civil penalty of $300,000 and to come into compliance with the Benzene Coke NESHAP by October 13, 1992.

State Air Enforcement Actions

Brunswick Naval Air Station (Brunswick, ME): The Maine Department of Environmental Protection, in a consent agreement finalized on June 24, 1992, assessed a penalty of $179,000 against the Brunswick Naval Air Station. The violation cited addressed Brunswick Naval Air Station's failure to install opacity monitors as required by the facility's license issued through the state's licensing regulations. This enforcement action highlights the fact that states can be successful in pursuing violations at federal facilities, including the assessment of penalties when warranted as a deterrent.

California v. Imperial Resource Recovery Associates: Cal EPA's Air Resources Board and the District Attorney of Imperial County have settled a civil lawsuit in Imperial County against Imperial Resource Recovery Associates, L.P., a power plant located in Imperial, California. The lawsuit alleged that the company failed to burn the required amount of field waste annually (permit condition); exceeded visible emissions limits for fuel handling and storage; operated unpermitted equipment; failed to inject ammonia for the reduction of emissions of oxides of nitrogen (NOx); exceeded emission limits for oxides of sulfur (SOx), NOx and opacity (as shown by IRRA's continuous emission monitors); failed to install ambient particulate monitoring equipment; burned excess natural gas; exceeded emission limits for NOx and SOx (source tests); and failed to observe continuous emissions monitoring requirements for NOx, SOx and stack oxygen. On October 20, 1992, the company agreed to pay a fine of $125,000.

California v. American Girl Mining Corporation: Cal EPA's Air Resources Board and the District Attorney of Imperial County have settled a civil lawsuit against American Girl Mining Corporation, an operation extracting gold-bearing ore from surface operations (open pits) and underground (mine shafts). The lawsuit alleges that American Girl operated a heap leach cyanide application process using sprinkler irrigation instead of drip irrigation for the application of sodium cyanide solution to its leach piles; combusted high sulfur diesel oil in its stationary and mobile diesel equipment instead of combusting low sulfur diesel oil; failed to report the total number of operating hours for each diesel engine generator quarterly to the Air Pollution Control District; failed to maintain a certified opacity observer at the mine site; and operated a 6 ton/hour portable cement batch plant without the required permits. On September 16, 1992, the company agreed to pay a $75,000 fine.

Nevada Division of Environmental Protection v. Coastal Chem: Coastal Chem constructed an ammonium nitrate plant under a permit that required the installation of low NOx burners on the plant's fire tube boiler. When the failure to install the burners was discovered during the plant's initial start-up phase, Coastal Chem was cited and appealed the citation. On October 26, 1992, the State Environmental Commission appellate panel, in imposing a $135,000 penalty (the maximum penalty of $5,000/day for 27 days of violation), noted concerns about the need for every operator to meet the obligations of self-compliance under clean air statutes and the risks to the system's integrity if non-compliance is tolerated.

Polaroid Corporation (Freetown, MA): Polaroid Corporation of Freetown, MA installed and operated unapproved VOC processes without obtaining a permit, operated in violation of other permit specifications regulating VOC emissions, and failed to submit accurate VOC usage data. The source is located in a serious ozone non-attainment area. Polaroid signed an administrative consent order with the Massachusetts Department of Environmental Protection on October 18, 1991, with provisions for payment of a $200,000 penalty and a compliance schedule. The compliance schedule required installation of control equipment and submission of a top down BACT analysis to the DEP by October 24, 1992.

Teknor Apex (Attleboro, MA): Teknor Apex of Attleboro, MA, a manufacturer of various plasticizers, was found by the Massachusetts DEP to be in violation of air, water, and hazardous waste regulations. The air violations included, among others, installing unapproved VOC control equipment. After a referral to the state Attorney General's office, a final consent judgment was filed on August 6, 1992 between Teknor Apex and the

Commonwealth of Massachusetts. This multi-media settlement requires payment of a $850,000 penalty and adherence to a compliance schedule.

S.D. Warren (Westbrook, NE): In a consent agreement signed on June 16, 1992, the Maine DEP fined S.D. Warren in Westbrook, Maine $725,000 for air emission violations and failure to maintain emission monitoring devices properly, which include illegal venting of Total Reduced Sulfur (TRS) compounds into the atmosphere. TRS is the gas responsible for the "rotten egg" smell in the community. At high concentrations TRS is toxic. At low levels TRS is not hazardous but is a significant public welfare problem which is taken seriously by the Maine DEP. The company was also cited for 73 counts of opacity violations documented by a continuous opacity monitor. S.D. Warren's failure to maintain its continuous emission monitors properly resulted in large amounts of time when emissions were unverified.

An additional violation was S.D. Warren's incineration of TRS gases in a power boiler which resulted in triggering PSD requirements due to the increase in sulfur dioxide emissions. To avoid the PSD review process legally, S.D. Warren lowered its sulfur dioxide emissions by agreeing to burn 0.7% sulfur oil instead of 2.5% in the power boiler. The company strenuously disagreed with the state on this issue because the incineration of TRS gases can be viewed as a control device. However, if a device results in increasing emissions of a regulated pollutant, it can trigger PSD regardless of whether that device is used for controlling emissions.

Clean Air Act Enforcement
Mobile Source Program

ARCO/Lyondell Petrochemical Company: On January 3, 1990, the Department of Justice filed a complaint against ARCO in the U.S. District Court for the Southern District of Texas for a violation of the lead phasedown regulations. The violation involved ARCO reporting blendstock as gasoline during the fourth quarter of 1984, banking 43,698 kg of unlawful lead rights during the first quarter 1985, and using 20,928 kg of these unlawful lead rights to meet the lead content standard during the third and fourth quarters of 1987. The case was settled for $500,000 after being vigorously contested by Lyondell, a subsidiary of ARCO. The decree was signed by the Assistant Administrator for Enforcement in late FY 1992, and was entered in early FY 1993.

U.S. v. CENEX: On July 31, 1991, the Department of Justice filed a complaint in the U.S. District Court for Minnesota, alleging multiple violations of the Lead Phasedown regulations by Farmers Union Central Exchange, Inc. (CENEX). A consent decree was entered in November 1992, resolving this matter and CENEX agreed to pay a penalty of $571,000.

Longoria's Muffler Shop: Longoria's Muffler Shop removed at least ten catalytic converters in violation of the tampering prohibition. The case was filed in federal district court in Corpus Christi, Texas, in September, 1990. A Consent Judgment was entered September 27, 1992, for a $10,080 cash penalty plus $2,000 for a training program to be presented by Colorado State University for auto mechanics in Corpus Christi. Longoria, in conjunction with Shaffer Muffler, decided by the same court several years ago, establish a significant deterrent against tampering in south Texas. The training program is expected to prevent future violations by informing the repair industry in south Texas about proper maintenance and specific violations of the CAA.

MSA Manufacturing Company, Inc.: This case was the first enforcement action undertaken pursuant to the defeat device provision of the CAA Amendments of 1990 and sought to enjoin MSA Manufacturing Co., Inc. from manufacturing and selling catalytic converter replacement pipes.

The consent decree provides for a civil penalty of $28,500 and prohibits MSA from manufacturing, selling, trading, or otherwise supplying test pipes. The decree requires MSA to issue a recall letter to all customers who purchased test pipes on or after the effective date of the defeat device provision (November 15, 1990), through the date of entry of the decree. In addition, the decree prohibits MSA from referring to test pipes in its advertising or sales-related documents.

Township of North Brunswick, New Jersey: On September 19, 1991, EPA issued a NOV against

the township of North Brunswick, New Jersey, addressing violations of the tampering prohibition of the Clean Air Act. The violations involved the intentional disabling of catalytic converters on eight township-owned police vehicles. The township subsequently submitted a report to EPA certifying that all 70 township vehicles had been inspected and no further tampering was discovered. Upon reinspection on November 6, 1991, EPA found an additional police vehicle with a disabled catalytic converter and a second NOV was issued. This case was settled on February 14, 1992, with the township agreeing to pay the entire $16,000 penalty.

Sun Company, Inc.: In July and August, 1992, EPA discovered violations of the gasoline volatility regulations at eight Sunoco retail stations in Massachusetts, New York, New Jersey, Pennsylvania and West Virginia. Sun has agreed to complete an extensive internal investigation to determine the cause of the violations and to strengthen its oversight program in the future. This case was settled in early FY 1993 for $48,600.

Clean Water Act Enforcement

Clean Water Act (CWA) enforcement supports the National Pollutant Discharge Elimination System (NPDES) program, which is the program regulating both direct and indirect discharges to the nation's navigable waters.

In re: City of Adrian: A Consent Agreement and Final Order (CAFO) was filed on July 15, 1992, in settlement of U.S. EPA's administrative action against the City of Adrian, Michigan, for violations of the CWA. The CAFO requires Adrian to pay a civil penalty of $25,000 and perform three environmentally beneficial projects. First, the city will install a dechlorination system at its wastewater treatment facility at a cost of $15,000. Although Adrian is presently in compliance with its TRC limits, installation of a back-up dechlorination system will reduce the possibility of future TRC exceedances. Second, the city has agreed to perform a water quality study of the South Branch of the River Raisin, in conjunction with the River Raisin Watershed Counsel. This study will cost $38,937. The resulting data will be used to improve stormwater management of the mostly rural area through which the South Branch runs. Third, Adrian has agreed to perform a comprehensive study of the Pho-Strip process (for removing phosphorous) at a cost of $61,000. The study will identify the impact of toxicants on the Pho-Strip process and determine the cause of sudden Pho-Strip upset.

In the Matter of the City of Altamonte Springs, Florida: The City of Altamonte Springs, Florida, was issued a Class II administrative penalty order on September 25, 1990, in the amount of $125,000. The Complaint was settled on March 2, 1992, by Altamonte Springs' entering into a CAFO Assessing Administrative Penalties. The settlement included a civil penalty of $55,000 plus a supplemental environmental project (SEP) valued in excess of $3,300,000 for the construction of a distribution system for reuse of the City's wastewater treatment plant effluent. Implementation of the SEP will significantly reduce the POTW's impact on the Little Wekiva River, which is classified as an Outstanding Florida Water, the most protected class of streams in Florida.

U.S. v. American Lantern Company (W.D., Tx.): On September 1, 1992, the Federal District Court for the Western District of Texas, entered a consent agreement which required the American Lantern Company to pay a penalty of $300,000 for past violations of categorical pretreatment requirements at a facility it had owned and operated in San Antonio, Texas. This agreement settled a United States action against the American Lantern Company for discharging pollutants into the City of San Antonio's publicly owned treatment works in violation of an industrial user permit issued by the City of San Antonio and the categorical pretreatment standards for the electroplating industry.

American Lantern Company is a Delaware Corporation which is engaged in the manufacture of lighting fixtures. The Company owned and operated a small decorative lighting fixture manufacturing facility in San Antonio, Texas, until December 1988 when it moved its operations to Nuevo Laredo, Mexico. As part of its manufacturing process, the company generated process waste water which it was required to treat prior to discharge to the City of San Antonio's POTW in accordance with an industrial user permit issued by the City and the categorical pretreatment standards for the metal finishing industry. From August 1984 to December 1988 the

Company discharged untreated process water to the POTW in violation of its permit and the categorical standards.

U.S. v. Aristech Chemical Company (S.D. OH): On February 12, 1992, a consent decree was entered in the Southern District of Ohio resolving a long-standing enforcement action under the CWA. For discharging pollutants in violation of its NPDES permit, Aristech paid a civil penalty of $72,000 and installed a carbon absorption system, dual media sand filters, and ultraviolet disinfection unit to treat its sanitary wastewater discharges to a level more stringent than the secondary treatment requirements of the Ohio River. The expected benefit to the environment includes the additional removal of suspended solids, soluble organic matter, phosphorus, ammonia, and fecal coliform bacteria. In addition, the installation of carbon absorbers and tertiary filters are expected to reduce suspended solids and biochemical oxygen demand (BOD) in the effluent by at least 67% (<10 mgs/l vs. 30 mg/l) on a consistent basis.

Aristech's Haverhill plant manufactures bulk and commodity chemicals from organic chemical and petroleum-based fraction feedstocks. The United States had initiated this action on June 30, 1989, after a review of discharge monitoring reports revealed that Aristech was discharging sanitary wastewater to the Ohio River in amounts which exceeded the company's NPDES permit limits for total suspended solids and BOD. The company has demonstrated compliance with its tertiary permit limits since July 1989.

U.S. v. Arochem International: A civil action was filed against Arochem for its violations of the CWA at its petrochemical facility in Guayanilla, Puerto Rico. A consent decree settling the Clean Water litigation was lodged with the Court in December 1991, requiring Arochem to comply with its NPDES permit and pay a civil penalty of $613,000. Before the decree could be entered, however, Arochem was placed in Chapter 11 bankruptcy. The pendency of the bankruptcy action precluded the entry of the decree. In August, 1992, Arochem petitioned for dissolution under Chapter 7 of the Bankruptcy Act. Arochem has ceased operation of its facility. In September 1992 the Region requested the Department of Justice to file a Proof of Claim in a bankruptcy action involving Arochem International, Inc.

U.S. v. City of Beaumont, Texas. (Eastern District, Texas): On February 20, 1992, the U.S. was awarded $400,000 against the City of Beaumont, Texas for failing to implement an industrial pretreatment program, required by the Defendant's NPDES permit under §402 of the Clean Water Act. The City's pretreatment program required the City to regulate industrial discharges into its treatment works. Among other things, the pretreatment program required the City to (1) identify significant industrial users of the treatment plant, (2) issue permits to these users which regulate what can be discharged the treatment plant, and (3) require the use submit self monitoring data. These violation the required pretreatment program w discovered during audits of the City's pretreatment program. The Court ruled in the government's favor stating that the above program activities were important aspects of a pretreatment program and not "unessential bureaucratic functions" as the City had argued. The Court ir osed a penalty in excess of the economic savings the City obtained during its period of noncompliance.

U.S. v. Bethlehem Steel Co. (D. Md.): On December 2, 1991, the Federal District Court for the District of Maryland entered a consent decree resolving the United States Clean Water Act civil suit against Bethlehem Steel Corp. (BSC). In this suit, the United States had alleged that BSC had spilled reportable quantities of hazardous substances into the Patapsco River on three occasions: two spills of sulfuric acid and one of ferric chloride. Under the consent decree BSC agreed to pay the statutory maximum penalty of $150,000 (less $3,000 paid to one state for the same violations). Bethlehem also agreed to remove the equipment that was the source of many of the spills, and to undertake a program to educate its employees in spill prevention and response.

In the Matter of Brunswick Rubber Company: In February 1992, Region II issued its consent order first assessing an administrative penalty against a public water supplier under §1412 of the Safe Drinking Water Act. At the request of the State of New Jersey, EPA had issued an administrative compliance order against Brunswick for failure to submit sampling results for fecal coliform and nitrates. Brunswick violated the compliance order by failing to submit sampling results for

nitrates. EPA issued a penalty complaint for $5,000 (the maximum permissible under § 1412).

U.S. v. City of Cape Coral et. al.: The assessed penalty in this case is the largest penalty ever obtained in Region IV for violations of a NPDES permit by a municipality. On October 13, 1992, a Consent Decree was lodged in the U.S. District Court for the Middle District of Florida to settle the above case. Under this Consent Decree, Cape Coral agrees to pay a civil penalty of $750,000 for past violations of the Clean Water Act.

U.S. v. Chevron USA, Inc. (C.D. Calif.): On July 28, 1992, the United States District Court entered a civil consent decree in which Chevron agreed to pay $1.5 million in civil penalties in addition to the $6.5 million in criminal fines agreed to in a global settlement of the criminal and civil actions brought under the Clean Water Act. These actions arose out of Chevron's violations of oil and grease effluent limitations in a NPDES permit for its offshore oil platform, Platform Grace, located in federal waters of the Santa Barbara Channel off the coast of Southern California. The civil action alleged both violations of the effluent limitations and reporting violations. The criminal action focused on the failure to report, illegal dilution, and other discharges from the platform.

The case was first referred as a civil matter following the issuance of an administrative order after an inspection of the platform. Information received in response to this administrative enforcement brought to light the reporting failures and the true extent and long history of oil and grease violations from the platform. The criminal case exemplifies the Agency's commitment to the integrity of the self-monitoring system under the Clean Water Act.

U.S. v. CPS Chemical Co., Inc. (E.D., Ark.): On May 1, 1992, Judge Wright, of the Eastern District of Arkansas, Jonesboro Division, entered a consent decree assessing a penalty of $1 million against CPS Chemical Company, Inc., for violating the requirements of its NPDES permit from 1984 through 1989 and violating the requirements of five administrative orders issued during that period. In a prior memorandum opinion issued on November 12, 1991, the court found that CPS, a specialty chemical company, was in violation of its 1984 NPDES permit requirements for 62 months, including over 1700 violations of daily maximum limitations and over 200 violations of daily average limitations. The court also found that CPS had violated all five of the administrative orders issued during the life of the 1984 permit.

CPS Chemical Co., Inc., which owns and operates a specialty chemical manufacturing company in West Memphis, Arkansas, manufactures, among other things, toxic pesticides. CPS failed to comply with the NPDES limits contained in its 1984 permit from the date of issuance until one month before the permit was due to expire and several months after a civil action was initiated. The $1 million penalty, is the largest penalty ever obtained in the State of Arkansas and in Region VI for an NPDES violation.

U.S. v. Dana Corporation (S.D. IN): On March 4, 1992, the U.S. District Court for the Southern District of Indiana entered a consent decree settling U.S. EPA's CWA civil penalty action against Dana Corporation. According to the decree, Dana will pay a civil penalty of $750,000 and construct a recirculating water cooling system and a treatment facility at its Hagerstown, Indiana, Engine Products Division. This work should reduce toxic pollutant loadings to the West Fork of the Whitewater River.

The United States had filed this complaint against Dana on February 27, 1991, in order to recover monetary relief for past discharges of hexavalent chromium and total chromium in excess of effluent limitations in Dana's NPDES permits. Dana's monthly discharge monitoring reports had showed a total of 1324 violations of Dana's effluent limits.

Escambia County Utilities Authority (Pensacola, FL): A March 1992 Consent Agreement and Order settled this action against the Escambia County Utilities Authority (ECUA) for NPDES permit violations occurring at its Main Street waste water treatment facility in Pensacola, Florida, discharging to Pensacola Bay. The action was prompted by numerous violations of fecal coliform and total residual chlorine permit limits over a 12 month period. The Consent Agreement and Order which included a civil penalty of $26,000 and a Supplemental Environmental Project (SEP) valued at $50,000. The SEP, proposed by the Northwest Florida Water Management District

and supported by the Florida Department of Environmental Regulation, consisted of an eighteen-month water quality data collection effort in Pensacola Bay and parts of contiguous water bodies. The study was designed to provide an updated water quality characterization of the Bay as a sound basis for subsequent wasteload allocation determinations and non-point source control decisions, and to provide a benchmark against which to measure the effects of ongoing pollutant control efforts.

FMC Corp (Wyoming): On January 8, 1992 EPA issued a Final Penalty Order assessing a $9,000 penalty against FMC for discharging without an NPDES permit 52,000 gallons of alkaline process water to the Black Fork River, resulting in a fill kill for 10 miles downstream. It is anticipated that this case will send a strong message to the regulated community that will deter future violators.

Township of Franklin Sewerage Authority v. Middlesex County Utilities Authority: A Consent Decree in this case against three New Jersey municipalities resulted in fines of almost $1 million for more than a decade of violations of the Clean Water Act. The Consent Decree requires the Township of Woodbridge, the Borough of Carteret and the City of Perth Amboy, to pay a collective civil penalty of $950,000 for past violations of the Clean Water Act at their sewage treatment plants. Compliance had been achieved previously by having the communities divert their sewage flows to the treatment facilities of the Middlesex County Utilities Authority (MCUA).

This case was initiated to compel the municipalities to join the MCUA's regional sewage system. Each municipality had operated its own inadequate sewage treatment facilities. Even though they finally complied by tieing into MCUA, it was only after numerous orders were issued by the Court and at least three contempt actions were initiated to enforce those orders.

U.S. and State of Indiana v. The City of Gary and the Gary Sanitary District, Indiana, (N.D. Indiana): This litigation commenced in January 1978 when the United States filed a complaint against the City of Gary and the Gary Sanitary District for NPDES violations at their POTW. In July 1986 EPA filed a complaint against Gary for violations of the Toxic Substances Control Act. The CWA and TSCA actions were consolidated in June 1987. Gary failed to comply with a 1983 settlement and after a modified consent decree was entered in September 1987 to resolve the prior violations, Gary again violated the new settlement. Gary's violations of the 1987 settlement and its gross failure to properly operate and maintain its treatment plant were among the most severe seen anywhere in the country.

Consequently in 1988 and 1989 the United States filed various motions to enforce the 1987 modified consent decree. After trial briefly commenced in November 1990, with considerable pressure from the court, the parties reached an agreement which resulted in this second modified consent decree, which was lodged with the court in November 1991, and subsequently entered in November 1992.

The consent decree contains an extensive set of remedial measures that Gary must undertake to achieve and maintain compliance with its NPDES permit, the Clean Water Act and the Toxic Substances Control Act. The Decree requires the defendants to complete numerous projects to repair, rehabilitate and maintain their wastewater treatment plant and their sewer system pursuant to a schedule. The Decree also requires the defendants to take various measures to implement their pretreatment program to control industrial discharges of toxic pollutants into the sewer system. In addition, the settlement requires the defendants to remediate the PCB-containing sludge lagoon that is immediately adjacent to the Grand Calumet River.

The settlement requires the defendants to pay a total sum of $1.7 million (in five equal annual installments of $340,000) for the study and remediation of contaminated river sediments in the Grand Calumet River (East Branch). This sediment remediation project will be implemented consistent with, and potentially as an addition to, the sediment remediation work being done by USX pursuant to EPA's 1990 settlement with USX.

The Decree also contains several innovative measures designed to address the fact that the defendants have grossly violated several previous settlements and to, hopefully, prevent

further violations. First, the Court will appoint a Special Administrator to oversee compliance with the Decree. This Special Administrator will have extraordinary powers to aid the defendants' compliance with this Decree, including the ability to circumvent other governmental subdivisions that have previously blocked necessary increases in user rates. Second, the Special Administrator, subject to prior approval by EPA, must appoint an independent contractor to operate the wastewater treatment plant. This independent contractor is given broad authority to operate the plant in compliance with the Decree, including the authority to hire and fire employees and procure supplies. Third, the Decree requires the defendants (or the Special Administrator) to provide sufficient funding necessary to comply with the requirements of the Decree.

Finally, unlike previous settlements with the defendants, this settlement requires the defendants to pay a civil penalty of $1.25 million over four years.

U.S. v. Koch Refining Company (S.D. Texas): The U.S. brought suit on behalf of EPA against Koch Refining Company under the Clean Water Act for NPDES permit effluent violations which occurred from August 1989 through February 1990. The facility discharges to the Corpus Christi Inner Harbor and the Nueces River Tidal Basin. The facility's violating discharges were of conventional non-toxic pollutants, including hexavalent chromium. In addition, a leaking pump was discharging untreated process water to a ditch without a permit for such discharges.

EPA and Koch negotiated a consent decree for $500,000, which was entered on February 18, 1992.

U.S. v. Louisiana-Pacific Corp. (N.D. Cal): On September 10, 1992, a consent decree modification was lodged in the United States District Court for the Northern District of California under which Louisiana Pacific ("LP") agreed to implement an all chlorine free bleaching process at its Samoa, California pulp mill. The modification amends an earlier consent agreement, entered March 11, 1992, between the United States and LP under which LP paid a civil penalty of $2.9 million (plus interest) and agreed to implement treatment measures to abate toxicity in the mill's effluent. The amended consent decree will expressly prohibit the use of chlorine at LP's Samoa mill after September 1, 1995 and will include stipulated penalties of $25,000/day, if LP uses chlorine at this mill after the 1995 deadline. The modification also requires LP to meet certain levels of chlorine free pulp production over the period leading up to September, 1995, to extend its outfall to a depth of 25 meters, and to measure recreation/health effects by conducting skin irritation tests. The elimination of chlorine from the mill's bleaching process is expected to yield significant environmental benefits since the generation of dioxin and many other highly toxic chlorinated organic compounds should be virtually eliminated from the mill's wastewater.

U.S. v. LTV Steel (N.D. IN): On May 26, 1992, a consent decree was lodged in U.S. District Court for the Northern District of Indiana, thereby resolving an enforcement action brought against LTV Steel Company. In a complaint filed contemporaneously with the decree, U.S. EPA alleged that LTV Steel had violated §§ 301 and 402 of the CWA by discharging oil and other pollutants into a waterway at LTV Steel's Indiana Harbor Works facility in East Chicago, Indiana. The consent decree requires LTV Steel to pay a civil penalty of $250,000 and undertake an extensive sediment remediation project.

This case had begun in February 1988 when oil escaped from an oil reclamation installation at the Indiana Harbor Works into the facility's primary water intake channel. Investigation of the spill later revealed two unpermitted discharge pipes and showed that sediment in the intake channel was contaminated with heavy oil. LTV Steel sealed off the oil reclamation installation and rerouted the discharge pipes to permitted wastestreams. Subsequent negotiations resulted in LTV Steel's agreement to pay the $250,000 penalty and perform a three-phase project to remove the oil and remediate the contaminated sediment in the water intake channel. EPA estimates that LTV Steel will remediate approximately 100,000 cubic yards of sediment at a cost of $6 to $10 million.

U.S. v. Mennen de Puerto Rico: EPA executed a Consent Decree ("CD") with Mennen de Puerto Rico ("Mennen") on July 1, 1992, which was entered on September 23, 1992. The decree resolved EPA's civil action initiated in 1990 against Mennen for violations of its NPDES

permit limitations. Under the decree Mennen paid a civil penalty of $573,700; ceased the direct discharge of wastewater from one of its outfalls; and agreed to undertake certain measures to bring its facility into compliance with its NPDES permit.

The decree called for compliance to be achieved by September 30, 1992. After entry of the decree, however, Mennen notified EPA that it could not comply with one parameter of the permit (the color parameter) by that date, and requested that an interim limit be extended until September 30, 1994. A modification to the decree providing such an extension is now being prepared.

U.S. v. Metropolitan District Commission et al. (D. Ma., Boston): Perhaps the single most important event to date in the Boston Harbor cleanup occurred on December 24, 1991, when sludge discharges to the harbor finally were terminated. The termination of these sludge discharges had been a central objective of the government's enforcement case since its filing in 1985.

For years, sludge collected at the two Boston area treatment plants had been unlawfully discharged at the end of each day, negating the benefits of the treatment. Under court order, the Massachusetts Water Resources Authority (MWRA) developed plans to finally terminate the discharges. Pursuant to these plans, the sludge is converted into and reused as fertilizer. The MWRA also is developing an in-state landfill to ensure that any sludge which is not marketed as fertilizer is safely disposed. The termination of the sludge discharges ends the discharge of about 70 tons per day of solids. This is bringing about a significant improvement in the Boston Harbor - Massachusetts Bay eco-system.

U.S. v. North American Philips Corporation (D. Me., Portland): A consent decree was entered on September 2, 1992, resolving violations of the Clean Water Act at the Lewiston, Maine, Philips-Elmet plant of the North American Philips Corporation. The government's complaint had charged the company with violations of national categorical pretreatment standards for metals manufacturing and metals forming, violations of local pretreatment limitations and violations of pretreatment reporting requirements.

Pursuant to the settlement, the company will correct its violations and pay a $500,000 civil penalty. In addition, as a supplemental environmental project, the company will spend about $583,000 to eliminate wastewater discharges from two non-federally regulated processes at its facility, thus going beyond minimum statutory requirements. EPA encourages pollution prevention projects of this kind and can take such projects into account when setting settlement penalties.

In coming into compliance and carrying out the pollution prevention project, the company will significantly reduce its discharges of pollutants. Discharges of molybdenum will be reduced by 1,446 kilograms per year, discharges of ammonia will be reduced by 839 kilograms per year, and discharges of fluoride will be reduced by 691 kilograms per year.

Oglala Sioux Reservation (Pine Ridge, South Dakota): On October 16, 1991, an administrative compliance order was issued to the Sioux Tribe ordering the tribe to cease the discharge of raw sewage from its Pine Ridge facility. Citizen complaints from the reservation and the obvious human health risks associated with the release of raw sewage prompted this action. Through close coordination with the municipal facilities branch of EPA this action proved to be successful. The discharge was ceased as required by the Order. The discharge of raw sewage to the nation's waters are a common occurrence on reservations due to the lack of treatment capacity. Through coordination with municipal facilities, EPA can help to eliminate these conditions by providing the tribes with money, technical assistance and a reasonable schedule for achieving compliance with the Clean Water Act. This case has served as a model for providing assistance to other reservations with inadequate wastewater treatment facilities.

U.S. v. Passaic Valley Sewage Commissioners and U.S. v. Joint Meeting of Essex & Union Counties: A half million dollars in penalties was ordered by the court as part an order for enforcement of earlier consent decrees and for additional violations of the Ocean Dumping Ban Act of 1990 (ODBA) by these New Jersey municipalities.

The New Jersey District Court ruling in January on the government's Motion to Enforce, ordered

Passaic Valley Sewerage Commissioners (PVSC) to pay $300,000 in stipulated penalties and Joint Meeting to pay $200,000. These penalties will be shared between the State and Federal governments. In addition, the Court gave each defendant 120 days to cure their noncompliance. The Consent Decrees were entered in 1989 actions to enforce the ODBA, which requires municipal sludge dumpers to cease the practice of ocean dumping of sewage sludge and implement long term alternative methods of disposal.

Under those Consent Decrees the defendants were to develop and implement both "short term" and "long term" sludge management practices as alternatives to the ocean disposal of sludge. Both PVSC and Joint Meeting selected as their "short term" alternative the dewatering of sludge and contracting for the sludge to be disposed of in landfills. Under the terms of the Decrees, defendants were to have contracts which extended until "long term" alternatives could be implemented. In both cases this was a period of seven years. However, both defendants entered into landfill disposal contracts of only five years, citing a purported state law which limited the terms of contracts. The five year term of the contracts was not in compliance with the requirements of the Consent Decrees. Despite numerous attempts to have defendants cure their noncompliance, they refused. Motions to Enforce the terms of Consent Decrees and assess stipulated penalties were filed in October 1991.

In the Matter of Pennsylvania Petroleum Products: EPA Region III issued the nation's first order for abatement of endangerment under the Oil Pollution Act Amendments of the Clean Water Act. EPA and the Pennsylvania Petroleum Products Company, Incorporated entered into an Administrative Order on Consent for the containment, recovery and disposal of oil that was released from the facility during a fire in November, 1991. As a result of that fire, oil released from the facility infiltrated the city stormwater system which discharges into the Delaware River. The Order required the submission of a Response Action Plan and schedule for developing and implementing appropriate cleanup actions to abate the uncontrolled release of oil and to protect public health and welfare (including natural resources); to safely demolish remaining on-site structures; and to pay costs incurred by EPA for oversight of the Order.

U.S. v. Puerto Rico Administration of Corrections: A Consent Decree was entered in June resolving a civil action initiated in 1990 against the Puerto Rico Administration of Corrections (PRAC) for violations of its NPDES permits at three prisons. Under the Consent Decree, PRAC will pay a $1 million civil penalty for its past violations, and undertake plant improvements to bring the facilities into compliance with their permits by May 1993. The penalty is one of the largest obtained by Region II under the Clean Water Act against a public agency in Puerto Rico.

The facilities involved are located in Guavate, Zarzal and Guayama, Puerto Rico. EPA obtained partial summary judgment on the issue of liability for permit violations in October, 1991. The Consent Decree requires PRAC to tie its Guayama facility into the PRASA system by May 1, 1993, and to undertake improvements to its Guavate and Zarzal facilities so that they will be in compliance with their NPDES permits by May 1, 1992 and February 1, 1993, respectively. The penalty is to be paid in two installments, with interest.

In the Matter of Puerto Rico Sugar Corporation: Region II issued a consolidated Consent Agreement and Order in June which resolved three administrative penalty actions pursuant to §309(g) of the CWA against the Puerto Rico Sugar Corporation. The Order requires the Sugar Corp. to pay a cash penalty of $85,000 and undertake Supplemental Enforcement Projects (SEPs) costing at least $50,000. If the Sugar Corporation fails to implement the SEPs it must pay an additional $50,000 as a cash penalty.

In March 1990, EPA issued a Class II administrative Complaint against Sugar Corp. for violations of the CWA at its Aguirre facility. EPA also issued a Class II Complaint in December 1990 against the company's Aquadilla facility. In May 1991, EPA issued a Class I Complaint against the firm for violations at the Central Mercedita facility. These actions were consolidated for the purposes of settlement discussions, which lead to issuance of the Consent Agreement and Order resolving all three actions.

U.S. v. Rhone-Poulenc Ag Co. and Union Carbide Chemical and Plastics Co., Inc. (S.D. W.Va.): In October 1990, the United States filed suit against Rhone-Poulenc and Union Carbide alleging

violations of the Clean Water Act. Specifically, the United States alleged that these companies had on numerous occasions spilled various substances into the Kanawha River, including the listed hazardous substances naphthalene, sodium hydroxide, and toluene. The United States also alleged that Rhone-Poulenc had violated the effluent limitations in is NPDES permit for the pollutants chloroform, naphthalene, and suspended solids.

On December 19, 1991, the Federal District Court entered a consent decree containing an agreement between the parties resolving the violations. Under the decree, Rhone-Poulenc and Union Carbide paid a civil penalty of $425,000. Rhone-Poulenc further agreed to undertake necessary remedial actions, including biotoxicity testing of the facility wastewater and an environmental compliance audit. The terms of the compliance audit require Rhone-Poulenc to hire an independent, EPA-approved consultant who is to determine the causes of the violations and develop a remedial action plan to be undertaken by Rhone-Poulenc.

This case is one of several that EPA Region III has taken against polluters located in the heavily industrialized Kanawha Valley in West Virginia in an effort to clean up the Kanawha River. It is especially important because of the comprehensiveness of the remedy obtained by the United States and the strong deterrent message sent to Kanawha Valley polluters.

<u>U.S. and State of Illinois v. Village of Sauget</u> (S.D. Ill): The Village of Sauget, an Illinois municipality of approximately 200 people, owns two publicly owned treatment works. Together, (one plant flows into the other), the plants provide primary and secondary treatment for wastewater for the communities of Sauget, East St. Louis, Cahokia, and the Commonfields (total service population of approximately 84,000), and a number of large industries. Over 50 per cent of the wastewater discharged to the Mississippi River by Sauget, approximately 15 to 20 million gallons per day, comes from industrial users.

In May 1988, EPA filed a complaint alleging that Sauget had failed to develop an approvable pretreatment program and exceeded its NPDES effluent limits for biochemical oxygen demand, iron, mercury, total suspended solids and zinc on various occasions. The complaint also alleged that Sauget had failed to demonstrate compliance with a whole effluent toxicity limit. In addition, the complaint alleged that Sauget was violating its permit by discharging an effluent with a bright yellow color and a strong solvent odor, in violation of applicable state water quality standards.

In March 1992, after lengthy negotiations and litigation, the court entered a consent decree settlement. Pursuant to the settlement, Sauget will pay a penalty of $750,000: $480,000 will be paid to the U.S. and $270,000 to the State of Illinois.

The primary purpose of the consent decree is to further reduce the toxicity of Sauget's wastewater discharge by treating the known toxicants, and by identifying and finding methods to treat the toxicants which are presently unknown. Therefore, the decree requires Sauget to implement a number of measures, including the continuation of adding powdered activated carbon to its treatment process. In order to immediately reduce the impact of the toxic effluent on aquatic life on the bank of the Mississippi River, Sauget has agreed to construct and is now operating a "high rate diffuser." In order to address the ammonia problem, which is primarily responsible for the remaining effluent toxicity, Sauget will install a "fine bubble aeration system", and will undertake other steps to improve ammonia treatment. Additionally, Monsanto, Harcros Pigments, and Trade Waste Incineration, three of Sauget's industrial users which collectively discharge roughly 25,000 pounds of ammonia to the Sauget POTWs per day, are required to reduce their ammonia discharges by over 90 per cent over the next four years.

Sauget also will pay Illinois EPA $50,000 for at least one year to hire an independent consultant (to be selected by Illinois EPA) who will act as an on-site "observer" of the implementation of Sauget's Pretreatment Program. The observer's primary function is to ensure that Sauget adequately enforces Monsanto's and Harcros Pigments' commitments to reduce ammonia. In addition, the settlement requires Sauget to conduct six separate studies of its wastewater and treatment. These studies will assist EPA in learning more about how Sauget's discharge impacts the Mississippi River, where the

problem pollutants are coming from, and in reissuing an appropriate NPDES permit for Sauget in 1996.

U.S. v. Simpson Paper (N.D. Cal.): On March 11, 1992, a consent decree was entered in this Clean Water Act enforcement action requiring Simpson Paper to pay a civil penalty of $2.9 million (plus interest). Suit was filed against Simpson Paper in 1989 for National Pollutant Discharge Elimination System (NPDES) permit violations occurring at its pulp mill on the Humboldt peninsula in Northern California. The facility had experienced numerous violations of its NPDES permit including violations of numerical limits for chronic toxicity (as measured by a bioassay), violations of numerical limits for reduction of natural light transmittance in receiving waters, and general prohibitions against causing adverse impacts to beneficial uses of receiving waters, including recreation.

In addition to the payment of civil penalties, the settlement requires Simpson Paper to implement treatment measures or process changes to abate toxicity in the mills' effluent. Under the decree, Simpson Paper was also required to study whether its effluent can be treated to the point of being essentially free of color, odor, skin irritants, and potentially mutagenic/carcinogenic compounds. If Simpson Paper is unable to demonstrate through its study that treatment will accomplish these goals, it is required to extend its ocean outfall. Simpson Paper also agreed to reduce the use of chlorine from its pulp bleaching process.

U.S. et al. v. South Florida Water Management District and Florida Department of Environmental Regulation (S.D. Florida): On February 24, 1992 the Memorandum Opinion and Order entered the previously agreed to Settlement Agreement as a consent decree, and resolved all claims of the original parties to the lawsuit, filed more than three years ago by the United States against the South Florida Water Management District (SFWMD) and Florida Department of Environmental Regulation (DER) for alleged failure to enforce state water quality regulations. The Complaint, claimed that high levels of phosphorous in the farm-water runoff from the Everglades Agricultural Area (EAA) have impacted the fragile ecosystems of the Everglades National Park (Park) and Loxahatchee National Wildlife Refuge (Refuge), altering the native plant communities and endangering indigenous plant and animal life. The runoff, which falls under the irrigation return flow exemption of the Clean Water Act, was released into the Refuge and Park through structures operated by the SFWMD in violation of DER regulations.

The Settlement Agreement which establishes interim and long-term phosphorous concentration limits for water entering the Refuge and Park, sets out specific remedial programs to achieve these limits. The Agreement was developed in consultation with several Federal Agencies and will require the Army Corps to modify the operation of the Central and South Florida canal system. Although the Court found that these activities constitute "major federal action" under NEPA, the Court concluded that rejection or delaying implementation of the Settlement Agreement would frustrate the statutory purpose of NFPA and therefore required NEPA compliance simultaneous with, but not as a condition to, implementation of the Settlement Agreement.

Sovereign Oil Company: On May 28, 1992, Region III issued a unilateral administrative order, pursuant to §§311(c) and (e) of the Clean Water Act, as amended by the Oil Pollution Act of 1990, to the Sovereign Oil Company of Pennsylvania, Inc. and to Edward Roth and Steven Roth, president and vice-president of the company respectively. The order required respondents to undertake a removal action at the Sovereign Oil Facility, located in Philadelphia, PA, to prevent the migration of oil from the facility into the city sewer system and from there into the Delaware River. Despite repeated efforts by the City of Philadelphia and the Pennsylvania Department of Environmental Resources (PADER), respondents had refused to undertake the cleanup of numerous oil spills that had occurred at the facility. Finally, both Philadelphia and PADER requested assistance from EPA in addressing the problems posed by the facility. This order is believed to be the first unilateral administrative order issued by EPA pursuant to the authorities conveyed by the Oil Pollution Act.

SYNTHES USA (Monument, Colorado): On February 25, 1992, EPA Region VIII issued a Proposed Administrative Order against Synthes USA, a categorical metal finisher in Monument.

Colorado, for violations of national pretreatment requirements. Among other things, the facility exceeded Federal categorical limits for chromium, cyanide, and pH. A Consent Order was issued on November 12, 1992, that requires Synthes USA to pay a civil penalty of $15,000 and undertake Supplemental Environmental Projects (SEPs) totaling $141,256. The SEPs that will be undertaken include development of an oily waste disposal system and a fluid management system.

Data Quality Enforcement Initiative

In May and June, 1992, Region II issued a total of nineteen Class I administrative Complaints pursuant to §309(g) of the Clean Water Act. The Complaints allege that NPDES permittees (mainly POTWs) have failed to comply with §308 of the CWA in not submitting analytical data as required by EPA's Discharge Monitoring Report Quality Assurance Study No. 11 Each Complaint seeks the imposition of a $10,000 penalty.

Each year, EPA seeks to review the quality of self-monitoring data generated by EPA permittees. The permittees are sent blank samples of unknown constituents; they must analyze these and return the results to EPA. In the past, substantial numbers of permittees have failed to fully comply. Last year similar actions were initiated against 22 permittees.

State Water Enforcement Actions

Alaska Department of Environmental Conservation: Alaska's environmental and law enforcement agencies joined forces during FY 1992 to form an Environmental Crimes Unit, with a full-time prosecutor, state trooper investigator, legal assistant, and coordinated support from within the Department of Environmental Conservation (DEC). In the first months of operation the unit participated in several investigations, ranging from "phantom dumping" of hazardous waste to tracking those responsible for releases of dangerous chlorine gas. The office is expected to concentrate on hazardous waste and water violations and to seek restitution which can assist in pollution prevention objectives. Indictments were brought against two individuals for dumping hazardous waste and other indictments are pending.

During FY 1992, the largest criminal and civil settlement for an environmental infraction in American history was made between the State and Federal governments and Exxon Corporation for the Exxon Valdez oil spill. The settlement, totaling over $1 billion, provided $112 million in criminal fines and restitution. The civil settlement, to be paid over a period of ten years, will be managed by six federal and state trustees to provide for restoration and enhancements to Prince William Sound.

State of Utah v. Geneva Steel Corporation: In the largest out-of-court settlement for violations of the Utah Water Pollution Control Act and the Utah Pollutant Discharge Elimination System Permit for its mill at Orem, Geneva Steel Corporation paid over $650,000 in stipulated penalties between December 1989, and September 1992. These stipulated penalties for discharging excessive ammonia concentrations were included in two Settlement Agreements, signed May 31, 1990 and December 11, 1991.

Weyerhaeuser Company v. Washington State Department of Ecology: In response to odor complaints from local residents, Washington Department of Ecology conducted several inspections at Weyerhaeuser's Cosmopolis, Washington, pulp and paper facility over the five-month period beginning in May 1991. Ecology's inspections determined that the odor was caused by the release of hydrogen sulfide and mercaptans resulting from Weyerhaeuser's dredging of sludges from its wastewater treatment ponds and depositing the sludges on a dredge spoils area. The order was settled when Weyerhaeuser agreed to reinstall aerators at the wastewater treatment ponds to prevent development of the odors and submit an operating and closure plan for the ponds.

State of Wyoming v. Holly Sugar Corp. (Torrington, WY): Holly Sugar exceeded its NPDES permit (WY-0000191) limitations for BOD and temperature for a period of six months and nineteen months respectively. As a result, the Wyoming Department of Environmental Quality filed action in court to seek civil penalties and injunctive relief for these violations. On July 14, 1992, Holly Sugar Corp. paid $70,000 in civil penalties and has agreed to an additional $50,000 in stipulated penalties should it have a "significant violation" in the future.

State of Wyoming v. Western Sugar (Lovell, WY): Western Sugar exceeded the BOD limitations established in its NPDES permit for a period of six months. As a result, the Wyoming Department of Environmental Quality filed action in court to seek civil penalties and injunctive relief for these violations. On June 29, 1992, Western Sugar paid $35,000 in civil penalties and has agreed to an additional $100,000 in stipulated penalties should it have a "significant violation" in the future.

Marine Protection Research and Sanctuaries Act (MPRSA)

Ocean Dumping Ban Act Cases

The New York and New Jersey municipalities which were dumping sewage sludge at the 106-mile site off the coast of New Jersey for many years have now all ceased dumping sewage sludge into the ocean, as required by the Ocean Dumping Ban Act of 1988 ("ODBA"). The Office of Enforcement was heavily involved in the negotiation and drafting of the federal judicial consent orders that were negotiated with the municipalities.

The ODBA amended the Marine Protection, Research and Sanctuaries Act, 33 U.S.C 1401 et seq., and required NY and NJ municipalities to cease ocean dumping by December 31, 1991. The NJ municipalities were: Bergen County Utilities Authority, Joint Meeting of Essex and Union Counties, Linden Roselle Sewerage Authority, Middlesex County Utilities Authority, Passaic Valley Sewerage Commissioners and Rahway Valley Sewerage Authority. All the NJ municipalities ceased dumping by March 17, 1991. New York was granted a six month extension of time to comply with the statutory deadline. NY ceased dumping half of its sludge by December 31, 1991 and completely ceased dumping by June 30, 1992.

In the Matter of Port of Oakland and Great Lakes Dredge and Dock Company (U.S. EPA Environmental Appeals Board): On an appeal brought by EPA of the initial decision of the presiding officer imposing a $10,000 penalty, the Environmental Appeals Board (EAB) reversed and assessed a penalty of $125,000 for Respondent's violations of the Marine Protection Research and Sanctuaries Act (MPRSA). The EAB found that the presiding officer had erred by independently evaluating the risk posed by ocean disposal of the dredged sediments in question. EPA had made a permit determination under the MPRSA that certain sediments in the Oakland Inner Harbor were unsuitable for ocean dumping. The presiding officer had reduced the proposed penalty for Great Lakes violations of the MPRSA (which occurred while Great Lakes was working as a contractor on a dredging project in the Inner Harbor) based on toxicity evidence introduced by Great Lakes suggesting that the permit should have authorized ocean disposal of all Oakland Inner Harbor sediments. In a ruling that is significant for future enforcement under the MPRSA, the EAB reversed the presiding officer's decision, holding that EPA need not introduce evidence of toxicity as part of its affirmative case, nor may a Respondent attempt to show that the gravity of its violations is slight by presenting toxicity data. The EAB decision makes clear that the initial permit determination establishes the element of harm for violations of the MPRSA.

Wetlands Enforcement (§ 404)

Section 404 of the Clean Water Act regulates the discharge of dredge and fill material into navigable waters. Enforcement emphasizes redress for unpermitted discharges in environmentally sensitive areas and seeks restoration of, or compensation for, environmental damage.

Clifton Water District: On the eve of a Class I administrative penalty hearing scheduled to begin on September 23, 1991, the Clifton Water District agreed to pay a $20,000 penalty for constructing a municipal water supply diversion structure in the Colorado River east of Grand Junction, Colorado, in violation of §404 of the Clean Water Act. The discharges, which occurred in the late fall of 1988 and winter of 1989, affected a reach of the river inhabited by the Colorado Squawfish, a federally listed endangered species, and the razorback sucker, which has been proposed for listing as an endangered species. The penalty settlement represented a milestone in a series of enforcement actions in response to the District's Clean Water Act §404 violations during construction of the diversion structure. In June, 1989, EPA ordered the

District to perform an alternatives analysis and studies of the structure's impact on migration of endangered fish species. On May 30, 1991, the District signed a consent agreement requiring it to seek after-the-fact authorization for the structure from the Corps of Engineers. The consent agreement also requires the District to remove any structures and fill material that are not authorized by the Corps at the conclusion of the after-the-fact permit process. The final order settling the penalty action was signed on November 20, 1991, and the penalty was paid shortly thereafter.

In the Matter of Judson M. Grant, Jr., KEV-LAN, Inc. and Grant Trailer Sales, Inc.: On April 29, 1992, Region I settled this administrative case against Judson M. Grant, Jr., and Maine corporations KEV-LAN, Inc. and Grant Trailer Sales, Inc. (GTS) for placing dredged and fill materials in wetlands under federal jurisdiction without a Clean Water Act §404 permit. Judson M. Grant, Jr. is the controlling partner of KEV-LAN, and sole stockholder and president of GTS. Grant, a Bangor, Maine area developer and businessman, performed the illegal filling on portions of three adjoining properties owned by KEV-LAN and GTS, and located in the outskirts of Bangor. Grant placed the fill from October, 1990 through April, 1991 to construct a retail facility for a gas station, convenience store and car wash complex. The wetlands filled were part of a forested and shrub swamp which drain to the Kenduskeag Stream, then to the Penobscot River. The defendants paid a $20,000 administrative penalty and restored five acres of wetlands to settle this case. EPA first became involved with this matter when it received a complaint from staff of the U.S. Fish and Wildlife Service office located in Orono, Maine. Region I pursued this case because of concern about cumulative wetland loss in the Bangor area and a desire to send a strong message to that community regarding the need for §404 permits and the values of wetlands.

U.S. v. Krilich Builders, et al. (N.D. IL): On August 7, 1992, the United States filed a complaint in the Northern District of Illinois, pursuant to the CWA, against Krilich Builders, et al., for violations of wetlands provisions at two sites in Illinois—Oakbrook Terrace and Lakemoor. After years of negotiation, Krilich has agreed to restore some wetlands, create some new wetlands, enhance existing wetlands, and pay a $185,000 civil penalty. Accordingly, the consent decree embodying these agreements was filed on the same day.

Krilich's violations at the Lakemoor site occurred in January 1986 when Krilich filled wetlands in violation of a Corps of Engineers permit. Violations at the Oakbrook Terrace site occurred in September 1988 and various times thereafter. EPA issued administrative orders for both sites requiring Krilich to stop violating the CWA and to restore the wetlands. After much negotiation, satisfactory restoration plans were received for both sites, and Krilich agreed to create wetlands both on and offsite as compensation for wetlands which were beyond restoration. The penalty of $185,000 is the largest one assessed to date in the regional wetlands program. It is estimated that more than $50,000 will be spent on creation, enhancement, and restoration of wetlands under this decree.

Washington City, Utah: On August 6, 1992, Washington City, Utah, signed an agreement committing it to pay $70,000 in administrative penalties for violations of CWA §§301 and 404. The unauthorized fill in wetlands occurred in 1988 during construction of a golf course in the southwestern Utah resort community. The discharges of fill material affected nearly six acres of spring-fed desert wetlands that contained an uncommon wetland plant known as Yerba Mansa (Anemopsis californica), which is found in only two counties in Utah. EPA's enforcement action was triggered by a Corps of Engineers inspection of the site in 1989. Washington City also performed wetland restoration and mitigation work on the golf course site following a March 1990 compliance order issued by Region VIII. These enforcement actions have corrected the environmental harm caused by the original violations and have had a deterrent effect against similar unauthorized activities throughout Utah.

Safe Drinking Water Act (SDWA) Enforcement

Public Water Supply System Program (PWSS)

The PWSS program establishes a regulatory program for public water systems and

requires EPA to set drinking water standards (including Maximum Contaminant Levels) for a variety of pollutants.

U.S. v. Butte Water Co. (D.Mont.) and U.S. v. Silver Bow Water, Inc. et. al (D.Mont.): On December 20, 1991, the United States filed a civil complaint alleging that the Butte Water Company had violated regulations setting the maximum contaminate level for turbidity, as well as for violations of the monitoring and public notice requirements. On December 31, 1991, the PWS system was sold to Silver Bow Water, Inc.

The United States and the State of Montana filed a complaint and lodged a consent decree with Silver Bow Water, Inc. on April 10, 1992. The consent decree was entered by the Court on May 15, 1992. The decree settles all injunctive relief necessary to ensure that the new owners and operators of the drinking water system come into full compliance with the SDWA. The settlement requires Silver Bow to complete by December 31, 1999, construction of two drinking water filtration plants and other improvements costing an estimated $20 million. Silver Bow must immediately take interim measures to improve water quality. Litigation continues with the Butte Water Company for substantial civil penalties for past violations.

U.S. v. City of North Adams (D. Ma., Springfield): In an order issued on June 24, 1992, the Court imposed a civil penalty of $67,200 against the City of North Adams, Massachusetts for violations of the Safe Drinking Water Act. In addition to awarding the penalty, Judge Freedman granted the United States' request for permanent injunctive relief. The order requires the City to construct a water filtration plant and achieve compliance with the Safe Drinking Water Act by January 31, 1994. In addition, the order requires the City to implement significant interim measures, including extensive additional monitoring of the water supply and the use of an alternative water source as necessary in order to insure the delivery of safe water until the treatment plant is operational.

On August 7, 1991, the Court had granted the U.S. Motion for Partial Summary Judgment determining that the City is liable for violations of the maximum contaminant levels (MCLs) for turbidity and coliform and for violations of monitoring requirements. A trial was conducted on the issues of penalty and injunctive relief in November-December, 1991. In an opinion issued on May 19, 1992, the Court underscored the seriousness of drinking water violations, stressing the increased risk of disease presented by MCL violations. In addition, the court accepted EPA's position that the economic benefit to the violator should be considered in determining the amount of a civil penalty under the Safe Drinking Water Act. Mitigating against a larger penalty, in the court's view, was the inability of North Adams' residents to pay a very large penalty in addition to the exceptionally high costs of compliance.

Underground Injection Control Program (UIC)

The UIC program establishes a regulatory program for underground injection practices for five classes of wells. Enforcement priorities include violations at deep hazardous waste and commercial disposal wells (Class I); violations at oil and gas wells (Class II); using banned shallow disposal wells (Class IV); enforcing the hazardous waste restrictions promulgated under the Hazardous and Solid Waste Act (HSWA); and enforcing against violations at injection wells for other than hazardous waste, mining, or oil and gas (Class V).

In re: American Oil Investments, Inc.: On May 8, 1991, a Final Administrative Consent Order was issued to American Oil Investments requiring American Oil to either pay a fine of $31,100 or to plug and abandon five underground injection wells which had been improperly abandoned in Greene County, Indiana. On January 25, 1992, U.S. EPA Region V received verification from the Indiana Department of Natural Resources that the five wells in question had been properly plugged and abandoned, concluding the respondent's obligations under the order.

U.S. EPA had issued its proposed Administrative Order to American Oil on September 20, 1990, due to the respondent's unauthorized operation of the well. Although American Oil had not profited by its unauthorized operation of the well, it agreed to perform a supplemental enforcement project.

In re: Aristech Chemical Corporation: On July 15, 1992, the Regional Judicial Officer (RJO) for Region V entered an order withdrawing a proposed administrative order issued to Aristech Chemical Corporation on May 15, 1991. The RJO's Order concluded a long series of enforcement related proceedings between U.S. EPA, Ohio EPA (OEPA), & Aristech. The order was entered into after Aristech paid a penalty of $200,000 to Ohio for violations of its class I deep injection well permits for wells located at its Haverhill, Ohio, facility.

Region V had become concerned with Aristech's facility when Aristech, while drilling its third deep injection well, discovered contamination of the Rose Run formation, a formation into which Aristech was not permitted to inject. OEPA immediately issued an administrative order, which was ultimately resolved with a consent decree requiring the completion of a test monitor well and the submission of a study regarding the cause of the contamination of the Rose Run formation.

During 1990-1991 Aristech failed to comply with the consent decree and continued to violate its class I deep injection well permits. In spite of U.S. EPA's efforts to encourage OEPA to take "appropriate enforcement action" under the SDWA, OEPA did not initiate formal enforcement action. Thus, on March 13, 1991, Region V issued a Notice of Violation (NOV) to Aristech, followed by a proposed administrative order issued on May 15, 1991.

On the thirtieth day after EPA issued a second NOV, Aristech and the Ohio Attorney General's office filed a complaint and consent agreement in the Circuit Court of Scioto County, Ohio. This decree virtually resolved all outstanding issues and requiring Aristech to pay a penalty of $200,000.

Resource Conservation and Recovery Act (RCRA) Enforcement

The RCRA enforcement program supports a comprehensive regulatory and corrective action program to ensure the safe treatment, storage, and disposal of hazardous wastes. In the past fiscal year, an aggressive enforcement program, including both civil judicial and administrative actions, emphasized multi-media coordination and targeted initiatives. With a new RCRA civil penalty policy in place, the RCRA enforcement program will seek increased penalties and economic sanctions, while continuing to encourage settlements incorporating pollution prevention and waste minimization goals.

Aluminum Company of America: On February 11, 1992, a Consent Order finalized the settlement of a RCRA §9006 Administrative Complaint for violations of release detection regulations for fifteen underground storage tanks ("USTs") by Aluminum Company of America ("ALCOA") at its facility at 3000 State Drive, Lebanon, PA.

The settlement required ALCOA to implement a Supplemental Environmental Project ("SEP") at the facility for the closure and removal of eight additional thirty thousand (30,000) gallon UST systems originally installed to store petroleum. The estimated cost of the SEP was $290,000. In addition, ALCOA paid a civil penalty of $6,500.

U.S. v. American Brass, Inc. (M.D. Ala.): On March 9, 1992, a modified Consent Decree was entered settling an action against ABI for failure to comply with the terms of a previous Consent Decree. ABI is a secondary brass smelter which recovers brass and other useable metals from scrap metals. One of the end products of this process is a furnace slag with a high lead content. ABI had been placing this slag directly on the ground since 1986 and accumulating the slag speculatively in violation of RCRA. This case was part of a multi-media lead initiative aimed at reducing lead exposure to the public and the environment.

The modified Consent Decree called for continued payment of $300,000 in civil penalties and extensive injunctive relief and increased stipulated penalties. Under the original Consent Decree, ABI was required to remove all slag from the slag pile. The modified Consent Decree enforces this requirement and requires ABI to complete health-based action level closure of the site of the former slag pile. In addition, all shipments of slag must be accompanied by shipping papers as outlined in the Modification.

U.S. v. Amsted Industries, Inc. (N.D. Ohio): On September 10, 1992, the U.S. lodged a Consent Decree as part of the multi-media Primary Metals Initiative. The complaint, filed May 26,

1987, alleged that Amsted Industries violated RCRA at two facilities; its Alliance, Ohio foundry, where Amsted allegedly generated, treated and shipped hazardous wastes without complying with RCRA; and its Sebring landfill, where it allegedly disposed of hazardous wastes illegally. The Consent Decree requires Amsted to pay a $250,000 civil penalty and comply with RCRA closure and post-closure care requirements at both facilities.

In re: Ashland Branded Marketing: On February 5, 1992, a Consent Agreement and Final Order (CAFO) with Ashland Branded Marketing (a division of SuperAmerica), was issued requiring Ashland to address violations of the UST release detection and LUST corrective action regulations at its facility in Burton, Ohio. Ashland is also required to pay a penalty of $65,125.

Region V had filed a complaint in May 1991. In its answer, Ashland moved to dismiss the complaint. Although it did not deny that it had violated the UST regulations, it disputed the particular requirements it had transgressed and admitted to various other violations under other competing legal theories. The Region moved to file an Amended Complaint that addressed all possible alternative theories of liability, and demanded a significantly larger penalty based upon all the competing theories. Before the ALJ could rule on any of the various motions, Ashland approached EPA to settle.

Burning and Blending Cases

During FY 1992, a number of cases were settled which were a part of Region II's cluster filing to redress Burning and Blending regulations associated with marketers of hazardous waste and/or used oil burned for energy recovery.

U.S. v. B & L Oil Corporation, and L & L Oil Service, Inc., (D. N.J.): Consent Decrees were lodged in these cases brought pursuant to RCRA §3008(a) and (g). The cases were filed separately in June 1990 as part of a Region II cluster filing to redress violations of RCRA's "Burning and Blending" regulations. Used oil contaminated with hazardous waste allegedy has been marketed as heating fuel and burned in residential and commercial boilers, often in densely populated areas. The regulations make this practice illegal. Through investigations and RCRA §3007 information requests, EPA determined that L & L and B & L's marketing activities failed to comply with the waste oil regulations.

The Consent Decrees call for a number of actions including implementation of workplans and payment of civil penalties. B & L will pay a civil penalty of $25,000 and L & L will pay a civil penalty of $55,000.

U.S. v. Eastern of New Jersey, Inc., and Eastern of Jersey Terminals, Inc., (D. N.J.): The District Court entered a Consent Decree on February 28, 1992. Eastern of New Jersey, Inc. ("Eastern") is a treatment, storage and disposal ("TSD") facility located in Jersey City, N.J. Through investigations and RCRA §3007 information requests, EPA determined that Eastern's marketing activities failed to comply with the waste oil regulations and related testing, notification and recordkeeping provisions.

The Consent Decree calls for payment of $195,000 in civil penalties and injunctive relief. The injunctive relief, valued at $38,900 per year, requires employee training and the implementation of a workplan that requires Eastern to perform supplemental analysis on incoming and outgoing used oil.

U.S. v. Lionetti Oil Recovery, Inc., (D. N.J.): A Consent Decree was entered on March 23, 1992. Lionetti Oil Recovery, Inc. is a treatment, storage and disposal ("TSD") facility located in Old Bridge, N.J.. The U.S. brought the case pursuant to RCRA §3008(a) and (g) as part of Region II cluster filing to redress alleged violations of RCRA's "Burning and Blending" regulations. Through investigations and RCRA §3007 information requests, EPA determined that Lionetti's marketing activities failed to comply with the waste oil regulations codified at 40 C.F.R. Part 266, Subpart E, and related testing, notification and recordkeeping provisions.

The Consent Decree calls for payment of $75,000 in civil penalties. It also calls for injunctive relief, including employee training and implementation of a compliance plan that requires defendant to perform supplemental analysis on incoming and outgoing used oil. The total cost estimate of this plan is $200,000/year.

Beazer East, Inc.: On May 12, 1992, the United States Court of Appeals for the Third Circuit rendered a precedential decision affirming the district court's order granting EPA's motion for summary judgment. This case involves an administrative enforcement action against Beazer East, Inc. for violations of Subtitle C of RCRA. The issue is whether certain aeration basins are tanks and thus fall within the wastewater treatment exemption, or whether they are surface impoundments, and thus subject to groundwater monitoring requirements.

The court found that EPA's interpretation of the "tank" definition's "provide structural support" language (that the unit must be completely self-supporting when removed from the ground and filled to capacity) was entitled to deference because of "the complex nature of environmental statutes and regulations and the specialized knowledge necessary to construe them." This decision upholds the Agency's distinction between tanks and surface impoundments and will facilitate compliance by the regulated community and enforcement.

U.S. v. Cedar Chemical Corp., (S.D. Miss.): On April 17, 1992, a Consent Decree was entered. Cedar Chemical Corp. ("CCC") owns and operates a chemical manufacturing plant in Vicksburg, Mississippi. EPA inspections revealed that the company generated hazardous waste and violated RCRA's land disposal, treatment, groundwater monitoring, and storage regulations. Extensive soil contamination was visible and indicated that there may be contamination of other media. The Consent Decree requires Cedar Chemical to spend approximately ten million dollars to perform corrective action.

EPA and Cement Kilns Sign Operating Agreements: EPA Region VII and three cement kilns located in Missouri and Kansas entered into operating agreements for the burning of hazardous waste for energy recovery under the Boiler and Industrial Furnace ("BIF") regulations, promulgated pursuant to RCRA. All facilities subject to the BIF regulations were required to certify compliance with BIF emissions standards as of August 21, 1992, or request an extension of time to do so. Continental Cement Company, Inc. of Hannibal, Missouri; Holnam, Inc. of Clarksville, Missouri; and Ash Grove Cement Company's facility located in Chanute, Kansas, were unable to meet the August 21, 1992 deadline. Each facility requested an extension of time pursuant to the BIF regulations. As a condition to granting the requested extensions of time, Region VII required each of the three facilities to enter into an Agreement regulating the continued burning of hazardous waste at each facility. The Agreements require each facility to meet rigorous operating standards for the burning of hazardous waste, until such time as the facility is able to certify compliance with the BIF regulations. The agreements also set forth detailed compliance schedules which each facility must meet, with a final date by which each facility must certify compliance with the BIF regulations or cease burning hazardous waste. In addition, the Agreements contain terms by which each facility consents to enforcement of the Agreements under RCRA §3008(a).

U.S. v. Chaparral Steel Co., Inc., (N.D. Texas): On July 10, 1992 the District Court for the Northern District of Texas entered a Consent Decree. Chapparal Steel Co. ("Chapparal"), a steel manufacturer located near Midlothian, Texas, was charged with violating the RCRA Land Disposal Restrictions ("LDR"). In connection with its manufacturing process, Chaparral generates particulate emissions. The emissions, which consist of mixtures of metal oxides and lime, are collected in baghouses. This electric arc furnace dust is a RCRA-listed hazardous waste (K061). The pollutant of concern is lead, which is highly toxic. The complaint alleged that Chapparal deposited insufficiently treated K061 waste in a landfill after the effective date of the prohibition on such disposal. This action was part of the 1991 LDR Initiative. The Consent Decree requires Chapparal to complete and implement a landfill closure plan and pay a $221,125 civil penalty.

Chemical Waste Management v. EPA, (D.C. Cir.): On September 25, 1992 the D.C. Circuit Court, in a unanimous per curiam decision, held, inter alia, that 1) the "Third Third" rules require disposal facilities to test treated wastes even if the wastes have already been tested by a generator or treatment facility; the frequency of testing would be determined on a facility-by-facility basis; 2) where EPA developed treatment standards based on grab sampling, it could also require use of grab sampling as the basis for sampling in enforcement cases.

The Court ruled on other important policy and programmatic issues that were not enforcement-related, including 1) EPA's authority to establish treatment standards below the level at which wastes are identified as hazardous by characteristic; 2) EPA's authority to allow dilution as a permissible means of treatment for characteristic wastes that are identified as hazardous for reasons other than toxicity (namely ignitable, corrosive, and reactive (ICR) wastes); 3) EPA's authority to allow characteristic wastewaters to be aggregated for centralized treatment in Subtitle D surface impoundments, if the aggregation also dilutes the wastewaters so that they no longer exhibit a hazardous waste characteristic; 4) EPA's authority to allow characteristic wastewaters to be diluted so that they no longer exhibit a characteristic and then be injected into Class I nonhazardous deep wells; 5) the reasonableness of the treatment standards for EP toxic lead and chromium wastes; 6) treatment standards for residues from Bevill units that co-process prohibited hazardous wastes along with Bevill raw materials.

In the Matter of Ciba-Geigy: On September 30, 1992, EPA negotiated a modification to a RCRA §3008(h) corrective action order originally issued to Ciba-Geigy in 1989. This is the first stabilization action to be negotiated and incorporated into a corrective action order in EPA Region I. The facility in Cranston, Rhode Island, now closed, was engaged in the manufacture of various organic and inorganic chemicals from 1970 through 1986. During the course of these operations, the facility generated chlorinated and non-chlorinated solvents, corrosive solids, polychlorinated organics and other hazardous waste streams.

Ciba-Geigy's Phase I RCRA study, conducted pursuant to the requirements of the original §3008(h) Order, demonstrated that areas of the facility and the Pawtuxet River are contaminated with volatile and semi-volatile organic compounds, and that contamination originating on-site is migrating via ground water to the River. The modification requires Ciba-Geigy to submit a stabilization plan for performance of the following interim measures: 1) treatment of contaminated soils in the production area of the facility, and 2) installation of a ground water "pump and treat" system in this area to prevent contaminated ground water from migrating to the Pawtuxet River.

Ciba-Geigy Corporation: On June 4, 1992, Region IV settled a RCRA §3008(a) action involving violations of the Land Disposal Restrictions at the Ciba-Geigy Corporation facility located in McIntosh, Alabama. The violations arose from the company's alleged disposal of wastewater treatment sludge in an on-site land vault. The wastewaters treated in the facility's wastewater treatment system included a wastewater from the operation of a hazardous waste incinerator, which was mixed with other wastewaters from the plant before treatment. Region IV filed its initial complaint in February 1991 as part of the 1991 LDR Initiative. The settlement provides for payment of a $150,000 civil penalty.

In re: Cid-Chemical Waste Management of Illinois, Inc.: On May 14, 1992, Region V signed a CAFO which requires Waste Management of Illinois, Inc. (WMI) to pay a $2,650 penalty and perform a supplemental environmental project costing at least $101,000. This is the Region's first RCRA settlement to incorporate a SEP.

The Big Marsh is an approximately 280-acre wetland site adjacent to and east of Lake Calumet in Calumet City and Chicago, Illinois, and is located within the immediate vicinity of the CID facility. The central components of the SEP are as follows: 1) the construction and operation of a permitted water control structure within the Big Marsh, and 2) the development and implementation of a plan (which is subject to approval by EPA, in consultation with the U.S. Corps of Engineers, the U.S. Fish & Wildlife Service, and the Illinois Department of Conservation) for managing the operation of the water control structure. The purpose of the water control structure is to control the level of water in the Big Marsh in a manner that will improve the quality, quantity, and diversity of vegetation, as well as improve wildlife habitat, existing within the Big Marsh. This action had begun on September 22, 1986, when EPA filed its complaint against WMI alleging numerous RCRA violations relating to inadequate groundwater monitoring.

U.S. v. City of Cleveland, et al. (N.D. Ohio): On November 22, 1991, the U.S. settled a case with sixteen (16) municipalities, including the City of Cleveland. The decree resolves a complaint

alleging that the defendants are liable under RCRA § 7003 for money EPA expended installing and operating a methane extraction system in order to abate a release of methane gas at the Matousek Landfill in Garfield Heights, OH. The municipalities have agreed to pay $412,000 to resolve their liability. In addition, the State of Ohio will assume operation and maintenance responsibilities for the system.

U.S. v. Com-Pak Engineering, Inc. and Eugene Evans, (C.D. Ill.): On May 20, 1992, the District Court entered a Consent Decree settling an action against Com-Pak Engineering involving alleged RCRA violations at the Brighton Landfill. Brighton Landfill, a subsidiary of Com-Pak Engineering, is a Missouri corporation that disposed of solid and hazardous wastes in a 43-acre interim status landfill in Macoupin County until 1985. EPA ascertained that Brighton Landfill had violated RCRA's ground water monitoring regulations and RCRA's regulations regarding closure and post-closure care. EPA issued an administrative complaint against Brighton Landfill in September 1984, and the parties signed a Consent Agreement and Final Order (CAFO) settling the matter in September 1985. Brighton Landfill allegedly violated the CAFO, prompting the EPA to bring this action against the parent company, Com-Pak Engineering on September 11, 1986.

The Consent Decree settling this action requires the defendants to 1) install a ground water monitoring system; 2) undertake closure activities related to the landfill cap and management of leachate generated in the landfill; 3) comply with financial responsibility requirements for closure, post-closure and liability coverage; and 4) pay a civil penalty of $60,000. The injunctive relief may cost the defendant approximately $250,000.

In re: Engelhard Corp. (Plainville, MA): Region I issued a RCRA §3008(h) Administrative Order against Engelhard corporation, a Plainville, Massachusetts firm engaged in various metal fabrication and metal finishing processes. The Order requires the company to study the nature and extent of hazardous waste contamination from its site activities, implement short-term stabilization measures while long-term corrective action remedies are pursued, propose cleanup standards, and study and recommend remediation technologies capable of achieving those standards. The Engelhard Corporation manufactures precious metals into wire and flatstock, primarily for the jewelry and electrical industries. The manufacturing processes at the site have included melting the raw metals, mixing with other metals to make alloys, and shaping, heat treating, and finishing metals. The wastes generated as a result of these operations, many of which are RCRA-hazardous, include cyanide, chromium, solvents, pollution control dust, sludge cake, and incinerator ash. The company has voluntarily conducted three phases of the investigations, and submitted the results to EPA. Results of these investigations indicate on-site and off-site groundwater contamination of chlorinated hydrocarbons. Metals, including zinc, cadmium, and chromium, also have been detected in onsite soils and groundwater.

U.S. v. Erie Coatings and Chemical, (E.D. Mich.): In an Order signed on February 18, 1992, the U.S. District Court for the Eastern District of Michigan entered judgment for the U.S. against Erie Coatings and Chemical, Inc. (Erie) and its corporate officers. The Court awarded the U.S. and the Michigan Department of Natural Resources ("MDNR") $3,142,000 in stipulated penalties and contempt sanctions for violations of the Consent Decree. Erie Coatings and Chemical ("Erie") is a corporation engaged in the business of producing roof coatings, driveway sealers, and foundation paint. Erie also received, stored and otherwise handled hazardous wastes at its Erie Michigan facility. On February 24, 1984, EPA Region V issued an administrative complaint against Erie and its corporate officers for several RCRA violations. EPA and Erie entered into a Consent Agreement and Final Order (CAFO) on February 5, 1985. On April 4, 1986, the U.S. filed a civil judicial action because Erie continued to operate the facility in violation of RCRA and the CAFO. On June 28, 1988, the U.S. and the defendants entered into a Consent Decree which required defendants to take specified actions designed to bring the facility into compliance. Erie continued to violate the terms of the Consent Decree, prompting the U.S. to file a motion for civil contempt on July 6, 1989.

In the Order, the Court also admonished the defendants that it would not hesitate to incarcerate the defendants for acting in contempt of Court if they violated environmental laws or

failed to cooperate with EPA and the MDNR. Erie has given EPA full access to the facility, and a EPA Superfund Removal Team from Michigan has obtained approval from Region V for $2,000,000 worth of clean up activities. The Michigan team will perform waste sampling and characterization along with cleanup activities. This case demonstrates EPA's commitment to aggressively enforcing Consent Decrees through contempt sanctions.

Friends of the Earth v. William K. Reilly et al. (D.C. Cir.): In June 1992, the Court of Appeals for the D.C. Circuit ruled in favor of EPA and denied a petition filed by Friends of the Earth (FOE) for review of the Administrator's decision denying FOE's claim for attorneys' fees and expenses under the Equal Access to Justice Act, 5 U.S.C. § 504 (EAJA). In this case, FOE sought to recover approximately $250,000 in attorneys' fees and expenses which FOE incurred while participating as an intervenor in an administrative proceeding conducted to determine whether to withdraw EPA's approval of North Carolina's hazardous waste program pursuant to §3006(e) of RCRA. The D.C. Circuit Court denied the application for fees and expenses and the petition for review. The Court adopted the Agency's reasoning, finding that the underlying action does not support a claim for fees under EAJA because that underlying proceeding did not constitute an adversary adjudication within the meaning of the Administrative Procedure Act, as required under EAJA.

U.S. v. Gateway Petroleum Co. Inc. (S.D. Ill.): On March 31, 1992, the U.S. District Court entered a Consent Decree. Gateway Petroleum Co. Inc., (Gateway) is a small blending and marketing facility operating in East St. Louis, Illinois. Through inspections, EPA determined that Gateway was mixing hazardous wastes with used oil without a permit and selling it as non-hazardous used oil. The U.S. filed a civil action pursuant to RCRA §3008(a) and (g) on August 17, 1988.

The Consent Decree settling this case requires Gateway to pay a civil penalty of $20,000. In addition, Gateway must close it facility in stages, screen all oil shipments, and send any off-specification oil samples to a laboratory that has prior approval from EPA.

In the Matter of Gilbert and Bennett Manufacturing Company, Inc.: On March 25, 1992 the Gilbert and Bennett Manufacturing Co., Inc. of Georgetown, Connecticut, agreed to pay a $290,000 penalty and to conduct a site assessment to settle an EPA Region I complaint for violations of RCRA. EPA's complaint alleged that Gilbert and Bennett failed to comply with hazardous waste management requirements, managed hazardous waste without proper permits, and inadequately monitored ground water.

As part of the settlement, the company will perform a site assessment, which is estimated to cost the company at least $100,000, to identify areas where wastes were managed and/or disposed of and to determine if releases of hazardous wastes occurred. The Georgetown facility was a steel wire fence manufacturer until 1989. The owners are in the process of decommissioning and closing down the plant.

U.S. v. Grand Blanc Landfill, Inc. (E.D. MI): On June 5, 1992, the U.S. District Court entered a consent decree in resolution of this case. The decree requires Grand Blanc Landfill, Inc. to submit a post-closure plan for its hazardous waste management unit, to perform post-closure in accordance with the plan approved by the Michigan DNR, and to establish financial assurance for post-closure by establishing a trust fund and making payments into the fund over a period of 15 years. In addition, Grand Blanc must pay a civil penalty of $20,000. A related company, Citizens Disposal, Inc., is also a signatory to the decree (although not a party to the litigation) and is responsible as "co-obligor" along with Grand Blanc for most of Grand Blanc's obligations under the decree.

U.S. v. Grumman St. Augustine Corp., (M.D. Fla.): On March 17, 1992, the U.S. District Court denied the defendant's Motion to Dismiss based on a statute of limitations defense, finding that any applicable statute of limitations does not begin to run in a civil RCRA enforcement case until the government knows or has reason to know of the alleged violations. RCRA contains no statute of limitations. However, for the purposes of this action only, both parties agreed to apply the Federal statute of limitations set forth in 28 U.S.C. § 2463. The defendant contested that the limitations period began to run on the date of the alleged RCRA violation, not on the date on

which the government discovered the alleged violation. The Court's decision clarifies and strengthens an important aspect of EPA's enforcement authority under RCRA because, where a Court applies a statute of limitations to a RCRA action, the U.S. will have support in arguing that the tolling of such statute of limitations should not begin until the government knew or had reason to know of the violation.

Grumman St. Augustine Corp. ("Grumman") generates a number of RCRA hazardous wastes from its operation stripping, repainting and refurbishing aircraft at its facility in St. Augustine, Florida.

U.S. v. Indiana Woodtreating Corp., (S.D Ind.): On May 21, 1992, the U.S. District Court entered a Consent Decree. The decree resolving this case requires Indiana Woodtreating Corporation to close two surface impoundments and several waste piles in accordance with RCRA regulations. In addition, IWC must also perform a RCRA Facility Investigation following the closure activities. The value of the settlement is approximately $350,000.

Indiana Woodtreating Corp. ("IWC") operates a wood-treating facility in Bloomington, IN. The company deposited hazardous waste generated from the wood-treating process in surface impoundments, a waste pile, and a stream on its property. IWC allegedly failed to properly notify EPA of its activity and apply for a permit, as required by RCRA. IWC also allegedly violated regulations applicable to interim status facilities. As a result, hazardous substances contaminated the creek and groundwater. In 1989, the Court found IWC liable, and IWC ceased business activities at the site. By order of the Court, IWC also deposited its remaining assets with the Court for performance of closure and corrective action activities.

In the Matter of Iowa Electric Light and Power Co., Palo, Iowa: A RCRA §3008(a) Complaint, Compliance Order and Notice of Opportunity to Request Hearing ("Complaint") was filed against Respondent Iowa Electric Light and Power Company by EPA Region VII on December 31, 1991 for violations at its nuclear powered generating station in Palo, Iowa. The Complaint alleged violations of RCRA in nine counts and sought total penalties in the amount of $452,700.

A Consent Agreement and Consent Order was filed on July 17, 1992. The CA/CO provided that Iowa Electric would inter alia: (1) pay a civil penalty of $300,000 (the remainder of the penalty originally sought in the Complaint becomes due and payable in the event of failure to comply with the CA/CO); and (2) complete two supplemental environmental projects that were directly related to the violations addressed in the Complaint. Respondent agreed to install new equipment at a cost in excess of $350,000 to permanently reduce the amount of mixed (radioactive) wastes that it generates. It is anticipated that the new equipment will reduce the annual amount of mixed waste generated by over 80%. Additionally, Iowa Electric agreed to make presentations at nuclear power industry meetings on "lessons learned" by the company, and on the corrective and supplementary actions taken by Iowa Electric to ensure compliance with RCRA.

In re: Koppers Industries, Inc.: On June 25, 1992, EPA filed a CAFO which resolved this administrative RCRA case. Koppers Industries, Inc. operated a wood treatment plant in Carbondale, Illinois. Inspections of the plant revealed that Koppers failed to properly monitor two waste management units and properly store, test, manifest, and dispose of hazardous waste. On May 11, 1990, the U.S. EPA filed a complaint, pursuant to §3008(a)(1) and (g) of RCRA. Negotiations resulted in Koppers agreeing to pay a $68,500 penalty for the alleged violations and to conduct closure procedures at the now-closed facility pursuant to a previous consent agreement reached with the State of Illinois and EPA.

U.S. v. Municipal and Industrial Disposal Co. v. Reilly, (W.D. Pa.): On August 20, 1992, a federal District Court Judge in Pittsburgh, Pennsylvania affirmed the magistrate's penalty recommendations in this case, involving a counterclaim by the United States. On one counterclaim count, the Court approved a penalty of $25,250, the penalty Administrative Law Judge Greene had imposed on the Municipal and Industrial Disposal Co. ("MIDC") in 1988 for violations of the RCRA groundwater monitoring requirements. Additionally, the Court affirmed the magistrate's recommendation on another count, imposing a penalty of $2,000 per day on William Fiore, MIDC's owner, for noncompliance with a RCRA §3013 Order issued in 1987. The Order required Mr. Fiore to study his hazardous

waste disposal facility located in Elizabeth Township, Pennsylvania, to determine if hazardous waste was leaking into the environment, including a nearby river. The Court upheld the magistrate's determination that Mr. Fiore had not attempted to comply in good faith and that he had sufficient assets to pay a $480,000 penalty for his noncompliance. Mr. Fiore is currently in state prison for hazardous waste, bribery and attempted murder convictions. The Court had previously entered summary judgment in the U.S.' favor on MIDC's appeal of the administrative decision and on MIDC's liability for not complying with the RCRA §3013 Order.

U.S. v. Ownbey Enterprises, Inc., (N.D. Ga.): On March 27, 1992, the District Court denied both the U.S.' and the defendant's motions for summary judgment. This action, which was filed on March 27, 1992, is the first civil judicial case involving the Federal enforcement of RCRA's underground storage tank requirements. Ownbey Enterprises owned two underground gasoline tanks at a convenience store in Dalton, Georgia. A nearby private drinking water well became contaminated with benzene from the tanks, prompting EPA to issue an administrative complaint. Ownbey signed an Administrative Order on Consent (AOC) on February 15, 1989, wherein it agreed to implement a corrective action plan and provide a permanent alternative drinking water supply to users of the contaminated well. Ownbey later repudiated the AOC, claiming that there was no proof that the contamination emanated from its tanks.

EPA brought a civil action seeking penalties and injunctive relief to compel Ownbey to comply with the terms of the AOC, and Ownbey asserted numerous affirmative defenses. In denying both parties' summary judgment motions, the Court disagreed with Ownbey's claims that EPA violated the defendant's due process rights, its claims that EPA did not comply with applicable statutory and regulatory requirements prior to approval of the AOC, and its claims that EPA acted arbitrarily and capriciously when it entered into the AOC. The Court also found that the U.S. had failed to meet its burden of showing the absence of material facts as to the affirmative defenses. The case is pending.

U.S. Pollution Control Inc. (USPCI): On September 30, 1991, this facility was issued a Complaint, Compliance Order and Notice of Opportunity for Hearing, and assessed a $610,130 penalty. The Complaint alleged that USPCI failed to perform the required chemical analyses on incoming hazardous waste as required by the EPA issued HSWA permit. The required chemical analyses was required by the permit to screen for the presence of halogenated organic compounds (HOC) in the waste loads. Research has shown that these HOCs can degrade the synthetic liners used in hazardous waste landfill cells, thereby causing the release of hazardous waste constituents into the groundwater system. On February 26, 1992, USPCI signed a Consent Agreement with EPA which required USPCI to pay $500,000 and required USPCI to have an outside laboratory to perform its HOC type analyses.

U.S. et. al. v. Production Plated Plastics, Inc. et. al., (6th Cir.): On February 20, 1992, the United States Court of Appeals for the Sixth Circuit affirmed two significant District Court decisions in U.S. et. al. v. Production Plated Plastics ("PPP"). The precedents established by the District Court in this RCRA action, and now affirmed by the Sixth Circuit, involve 1) holding a corporate officer personally liable as an owner and operator of a treatment, storage and disposal facility, and 2) granting injunctive relief through summary judgment.

PPP engaged in molding, electroplating, and painting of plastic parts, primarily for the automotive industry. In March 1987, the U.S. and the State of Michigan filed an action in District Court alleging, inter alia, that the defendants had been operating a surface impoundment and waste pile in violation of RCRA after losing "interim status" to operate pursuant to RCRA §3005(e). On May 14, 1990, the District Court granted summary judgment on liability, finding corporate officer and PPP owner Michael Ladney personally liable, jointly and severally, for the RCRA violations.

In an opinion and Order dated January 24, 1991, the District Court granted in part the U.S.' and Michigan's Motion for Partial Summary Judgment on Injunctive Relief, requiring defendants to implement and complete a state-approved closure plan, comply with post-closure requirements, and implement a new groundwater monitoring system. The Court also denied the governments' motion for

a permanent injunction requiring defendants to comply with RCRA's financial responsibility requirements, identifying issues of fact to be considered at trial. The Sixth Circuit found that the District Court had properly applied the standards for injunctive relief. Significantly, the Sixth Circuit rejected the defendant's defense that it is impossible to comply with the District Court's injunction. While not directly addressing the issue of individual corporate officer liability, the Sixth Circuit expressly adopted both opinions of the District Court. The decision is environmentally significant in that it holds officers liable. It is also believed to be the first RCRA case where injunctive relief was granted through summary judgment.

The District Court held trial on the remaining issues of financial responsibility and civil penalties. On September 4, 1992, the District Court awarded $1,500,000 in penalties in August 1992. In doing so, the Court acknowledged that the defendants have assets that can be liquidated to satisfy the Court's judgment and stated that if defendants failed to do so, the Court would "appoint a trustee recommended by the plaintiffs to operate defendants' business and personal affairs and expeditiously liquidate whatever assets are necessary to provide funds for compliance." The District Court's Opinion included a good discussion of the purpose and effect of a civil penalty, including the recovery of economic benefit. The Court deemed that the defendants had received an economic benefit of noncompliance of at least $1 million through their failure to comply with RCRA. On March 4, 1993, the District Court denied the defendant's motion to vacate its opinion.

In the Matter of Rhode Island Buckle Company: On September 30, 1992, the Rhode Island Buckle Company agreed to pay a $300,000 civil penalty for violations of RCRA at its Providence, Rhode Island facility. EPA brought an administrative action against Rhode Island Buckle for alleged violations of container management, personnel training, contingency plan, and land disposal restriction requirements. As a result of this action, Rhode Island Buckle has developed a contingency plan for emergencies at the site and has developed an extensive training program. Rhode Island Buckle will now manage its wastes in accordance with RCRA requirements, including those governing container labeling, accumulation time, and LDR notice and recordkeeping requirements.

U.S. v. Rohm and Haas, et al. (E.D. Penn): In a precedential decision of national significance on March 30, 1992, judgment was entered for the United States and against Rohm and Haas Company, Rohm and Haas Delaware Valley, Inc., Chemical Properties, Inc. and Bristol Township Authority in a CERCLA cost recovery action. The Court awarded EPA, pursuant to CERCLA, oversight costs incurred by the RCRA program (in addition to costs incurred by the CERCLA program). This decision enables the Agency to successfully pursue reimbursement of costs incurred under RCRA in remediating hazardous waste sites under CERCLA §107. The court's decision was appealed by the defendants to the United States Circuit Court for the Third Circuit on June 1, 1992. In this case, EPA will, if the District Court decision is affirmed, recover $401,348 plus interest representing 100% of past costs and all future costs incurred.

In the Matter of Safety Kleen Corporation: On April 30, 1992, EPA Region I approved Safety-Kleen Corp.'s Supplemental Environmental Project, a videotape on land disposal restrictions (LDR). The videotape was produced pursuant to a June 1991, CAFO resolving alleged violations of RCRA's LDR requirements at eight Safety-Kleen facilities. Under the terms of the agreement, Safety Kleen agreed to pay a civil penalty of $116,000. A $16,000 portion of the penalty was to be offset in return for Safety-Kleen's production and distribution of a video, aimed at generators of LDR wastes, explaining the LDR requirements. Safety-Kleen was given twenty days to distribute the videotape to 100 trade associations and industry groups chosen by EPA Region I.

In the Matter of Sanitary-Dash Manufacturing Co., Inc.: On July 28, 1992, Sanitary-Dash Manufacturing Co., Inc. agreed to pay a $23,300 civil penalty plus implement two supplemental environmental projects (SEPs) to resolve alleged RCRA violations found at its North Grosvenordale, Connecticut facility. EPA issued an administrative complaint against Sanitary-Dash for violations of requirements for hazardous waste container management, contingency planning, personnel training and records, hazardous waste storage, hazardous waste testing, and inspection logs. As a result of this

action, the company is now in compliance with the RCRA regulations. Under the terms of the agreement, the company will pay the cash penalty and perform two SEPs at a combined cost of $180,000. The two pollution prevention projects require Sanitary-Dash to modify its plating process and to create secondary containment for the part of the process where lead polishing dust is collected.

The SEPs will reduce the need for polishing the finished product, thereby reducing the generation of lead polishing dust. Also, a change from hexavalent to trivalent chrome will: (1) eliminate the need for the annual cleanup of the chrome plating tank which was the source of some of the violations in the complaint; (2) decrease the proportion of solids in the sludge waste stream by 33%; and (3) substantially reduce the use of sulfur dioxide which is currently used to reduce hexavalent chromium in the company's wastewater treatment process.

Shell Oil v. U.S. EPA: On December 6, 1991 the D.C. Circuit Court of Appeals issued a decision in Shell Oil Co. v. U.S. EPA which, among other things, vacated and remanded the "mixture" and "derived from" rules, and soil pore leachate monitoring requirements for land treatment facilities. The "mixture" rule classifies as a hazardous waste any mixture of a listed hazardous waste with any other solid waste. The "derived from" rule classifies as a hazardous waste any residue derived from the treatment of hazardous waste. The Court based its decision solely on procedural grounds—EPA's failure to provide adequate notice and opportunity to comment when the rule was originally promulgated in 1980. EPA reenacted the "mixture" and "derived from" rules on an interim basis pending full notice and comment proceedings, on Feb. 18, 1992.

In the decision, the Court also upheld EPA's definition of "treatment" and the "permit shield" provision. The Court held that EPA had not exceeded its statutory authority in including resource recovery in the regulatory definition of "treatment" of hazardous waste, and that EPA had complied with notice and comment requirements with respect to that regulation. Secondly, the Court held that EPA's "permit shield" provision, protecting RCRA permit holders from enforcement actions for most RCRA requirements other than violations of permit conditions, was within EPA's enforcement discretion.

Sinclair Oil Corporation (SOC): A Consent Agreement and Final Order was signed September 16, 1992, concerning SOC's alleged failure to revise its RCRA Part A application to include benzene (D018). Facts provided by SOC after issuance of the complaint reduced the proposed penalty to $25,750. EPA agreed to waive the penalty amount over $10,000 if SOC would conduct a Supplemental Environmental Project (SEP) to improve the quality of the refinery effluent. The SEP will include the construction of a sour-water stripper at the refinery which will reduce benzene, sulfides, and ammonia, and increase water conservation which will be economically beneficial to SOC. The SEP is of the pollution reduction type, involving new equipment. The projected cost of the SEP is in excess of $1,000,000. Also, as the SEP is reportedly going to save SOC money due to water conservation, there is a greater likelihood that SOC will take steps to ensure its success.

In the Matter of Southern Timber Products, Inc. d/b/a Southern Pine Wood Preserving Company, and Brax Batson: On February 28, 1992 the Judicial Officer denied Region IV's Motion for Reconsideration in Southern Timber Products, Inc. Region IV had filed the motion to contest the Judicial Officer's earlier ruling, which held that "absent circumstances that justify a piercing of the corporate veil, the Agency may not reach beyond a corporate operator to impose liability for violations of Part 265 upon a corporate officer." Although the Judicial Officer denied the Motion for Reconsideration, he agreed that the liability of corporate officers under RCRA was not limited to traditional corporate veil piercing theories and that operators who exercise active and pervasive control over the overall facility may be liable as an "operator." Southern Timber Products, Inc. was formed in 1977 for the purpose of purchasing the Wiggins wood treatment plant. The corporation was established to shield its four shareholders from personal liability. Mr. Batson was a shareholder, corporate officer and director. He was also the "conduit" between the plant managers and the Board of Directors and the the primary link between the corporation and the regulatory officials. Region IV's complaint alleged that

Southern Timber Products and Mr. Batson violated the RCRA interim status rules governing closure and post closure with respect to a wastewater surface impoundment at the Wiggins facility.

U.S. v. Structural Metals, Inc., (W.D. Texas): A Consent Decree was entered on May 27, 1992, which requires Structured Metals, Inc. ("SMI") to remove and properly treat all illegally disposed waste, and pay a $325,000 civil penalty. As part of its steel manufacturing process, SMI generates large amounts of particulate emissions from its electric arc furnaces, which are collected by a scrubbing system. The resulting electric arc furnace baghouse dust (K061) is one of the "first third" listed wastes for which EPA promulgated land disposal prohibitions and treatment standards in 1988. The pollutant of concern is lead. EPA discovered that SMI land disposed of some its high zinc K061 wastes in violation of the LDR requirements, found at 40 C.F.R. Part 268. The U.S. brought an action against SMI as part of the LDR Initiative, filed in February, 1991.

Stone Container Corporation: This was the first RCRA case in Region IV to incorporate pollution prevention as a term of a RCRA settlement. On October 30, 1991, Region IV settled a RCRA § 3008(a) action brought against Stone Container Corporation for alleged violations of the LDR at the company's Panama City, Florida facility. The alleged violations arose from the use of an unlined surface impoundment as a neutralization tank for acidic and basic wastes generated in the facility's water purification plant. The complaint, filed as part of the 1991 LDR Initiative, sought compliance and a civil penalty.

The Respondent immediately came into compliance. In the Consent Order, the Respondent agreed to pay a $100,000 civil penalty and to perform a pollution prevention Supplemental Environmental project. The SEP, with an estimated value of $578,000, involves the purchase and installation of new water purification equipment. Because this equipment was more efficient than the equipment it replaced and consumed less raw material, the new equipment is expected to generate approximately 25% less acidic waste. This decrease in acidic waste also allows the facility to use some of the basic waste, formerly used to neutralize the acidic waste, to replace virgin caustic being used elsewhere in the facility.

U.S. v. ThermalKEM, Inc., (D.S.C., Rock Hill Division): This case represents the first civil action in which EPA has sought to enforce conditions imposed under the "omnibus provision."

On September 17, 1992, the U.S. filed a civil action against ThermalKEM, Inc., for violations of metal feed rate limits contained in the federal portion of its hazardous waste incinerator permit. The metal feed rate limits contained in the permit were imposed under the "omnibus provision" of RCRA §3005(c)(3), which allows EPA to impose permit conditions to protect human health and the environment.

ThermalKEM is a Delaware Corporation which owns and operates a hazardous waste treatment and storage facility located in Rock Hill, South Carolina. At the facility, ThermalKEM operates a dual chamber hazardous waste incinerator, which is used to burn solid and liquid hazardous waste. On June 28, 1988, EPA issued a permit to ThermalKEM which contained metal feed rate limits for antimony, arsenic, cadmium, chromium, and lead. The U.S.' Complaint is based on several occurrences from September 13, 1989 to June 8, 1990, during which ThermalKEM incinerated hazardous wastes containing metals allegedly in excess of the allowable feed rate limits. The alleged violations were uncovered in an EPA-led compliance inspection.

In the Matter of University of Texas: The University of Texas at Austin, Texas (UT) and EPA Region VI signed a RCRA § 3008(a) Consent Agreement and Final Order on April 20, 1992. This settlement was significant in that UT agreed to develop a waste minimization program for the University to address the wastes generated by laboratory projects and experiments conducted by University students and professors. This waste accounts for approximately 90 percent of the waste generated by the University. The waste minimization project will be suitable for use in large academic research institutions, and UT will be sponsoring a seminar for other educational institutions to disseminate the knowledge acquired during the development of the project.

In re: Vulcan Materials Company: On March 4, 1992, Region V signed an Administrative Order on Consent involving Vulcan Materials Company of Port Edwards, Wisconsin, under RCRA §3008(h).

The order requires Vulcan to implement interim measures to mitigate any current or potential threat to human health or the environment which requires immediate corrective action and perform a RCRA Facilities Investigation, a Corrective Measures study (if necessary), and associated work plans. An important component of this Order requires Vulcan to sample the Wisconsin River and sediments near its facility for mercury contamination.

EPA estimates that Vulcan will incur approximately $250,000 under the order. Vulcan Materials produces chlorine, sodium hydroxide, and potassium hydroxide using a mercury cell at its 16.75 acre facility. BASF Wyandotte Corporation owned Vulcan's facility between 1970 and 1980, and on September 8, 1976, 440,000 gallons of mercury containing brine reportedly spilled at the facility. Approximately 300,000 gallons of that material left the facility, 40,000 of which entered the Wisconsin River. The facility estimates that approximately 63 pounds of mercury were contained in the solution that migrated from the site.

In the Matter of Western New York Nuclear Service Center: In a cooperative effort between federal and state agencies, a Corrective Action Order was issued jointly by Region II and the New York State Department of Environmental Conservation (NYSDEC) in March for cleanup work at the state-owned Western New York Nuclear Service Center near West Valley, NY. The Order is the first one issued to a federal facility in Region II under RCRA §3008(h). Signatories to the order include the U.S. Department of Energy (DOE) and the New York State Energy Research Development Authority (NYSERDA).

This Order is the first in a two step compliance package to be negotiated with the three other agencies; it was finalized after two years of negotiations. The Order addresses known releases of hazardous waste at the site, and is being followed by a Federal and State Facility Compliance Agreement dealing with the storage of mixed radioactive and hazardous waste at the location.

Under the agreement, DOE, the operator of the site, and NYSERDA, the site's owner, will take corrective action on the release of hazardous wastes, including radioactive mixed waste. DOE and NYSERDA will perform a RCRA Facility Investigation and Interim Measures as well as additional work depending on what the investigations reveal.

The 3,300 acre site is home to the West Valley Demonstration Project (WVDP), a joint Federal/State effort, authorized by Congress in 1980, to solidify high level radioactive wastes left over from the nation's only commercial nuclear fuel reprocessing operation, and to clean up the facilities used in the project.

University of Wyoming: A Consent Agreement and Final Order was reached with the University of Wyoming which included the largest settlement with a public institution in the Region and perhaps in the United States in the amount of $43,000. Additionally, the respondent agreed to submit a comprehensive waste minimization plan and submit a comprehensive personnel training plan. The respondent hired a qualified safety/RCRA hazardous waste coordinator.

The complaint alleged 10 separate incidents of illegal disposal of RCRA hazardous waste by open burning and/or open detonation; one count for failure to notify of hazardous waste activity was also included.

NATIONAL INITIATIVES

Illegal Operator Initiative

On February 4, 1992, EPA and nine states announced a major nationwide campaign against those who have been avoiding the nation's hazardous waste management system and handling such waste in a potentially dangerous manner. EPA and the states together issued 50 civil enforcement actions, assessing over $20 million in penalties, against generators and transporters of hazardous waste and owners and operators of facilities who have disregarded the requirements of the Resource Conservation and Recovery Act. In addition, EPA announced that it had taken several criminal enforcement actions to halt criminal hazardous waste activities. The states participating in the initiative were: Maryland, Alabama, Florida, Georgia, South Carolina, North Carolina, Ohio, Colorado, and Washington. Some of the cases filed included:

In re: Deeter Foundry, Inc. (Lincoln, NE): EPA Region VII brought an administrative enforcement action against Deeter Foundry, Inc. located in Lincoln, Nebraska. The foundry produces municipal gray iron castings using green sand molds. The facility generates a sludge from its air pollution control scrubber which is hazardous because it fails the Toxicity Characteristic for lead and cadmium. The administrative Complaint and Compliance Order alleged that the facility had been disposing of the hazardous waste scrubber sludge on the land, and it required development and implementation of closure and postclosure plans for the facility's hazardous waste disposal unit, the installation of groundwater monitoring, and the maintenance of financial assurances to ensure appropriate closure and postclosure care as well as liability insurance coverage for accidental occurrences due to management of hazardous waste.

Ram Leather Care (Charlotte, NC): The State of North Carolina brought an administrative enforcement action against Ram Leather Care, located in Charlotte, North Carolina. The company is a dry cleaning facility specializing in leather, suede, and furs. During a state inspection, open drums of waste mineral spirits were found stored at the facility, and inspectors discovered that some of the contents of the drums had been discharged to the ground. Sampling indicated that boiler "blow down" was contaminated with tetrachloroethylene and other organics, which are classified as hazardous wastes under RCRA. In addition, groundwater supplies within 1/2 mile of the facility were found to contain tetrachloroethylene and related organic contaminants. A Compliance Order was issued by the State to address the soil and groundwater contamination.

U.S. v. Robert M. Brittingham and John LoMonaco (N.D. Tex.): On January 16, 1992, a federal grand jury in Dallas indicted two former officers of Dal-Tile Corporation, Robert M. Brittingham and John J. LoMonaco, for felony violations of RCRA and conspiracy to violate RCRA. Dal-Tile, which employs more than 5,500 people throughout the U.S. and Mexico, makes ceramic tiles at a large plant in Dallas County, Texas. The charges arose from the alleged disposal of lead-contaminated hazardous waste in a unpermitted sand and gravel pit in Dallas County. Mr. Brittingham is the former Chairman of the Board and former partowner of Dal-Tile. Mr. LoMonaco is a former Board member and the former President of Dal-Tile.

U.S.-Mexican Border Enforcement Actions

On June 3, 1992, EPA Administrator Reilly announced the first enforcement actions in the United States resulting from efforts outlined in the Integrate Environmental Plan for the Mexican-U.S. Border Area -- a total of 17 federal and state actions, seeking more than $2 million in penalties. Four of the actions (2 criminal actions and 2 administrative actions) were for alleged violations of RCRA. All of the state and federal actions involved alleged violations of U.S. environmental laws in the border area, or alleged violations of U.S. laws governing transboundary shipments of hazardous wastes or toxic substances.

U.S. v. Sbicca of California, Inc. (El Monte, CA): Sbicca of California, Inc. of El Monte, California, Dominic Sbicca, Eduardo Reyna, and Juvenal Cabrera-Cruz, three of its employees, were indicted on May 14, 1992 by a federal grand jury in San Diego on three felony counts, including conspiracy, illegal transportation of hazardous waste without a manifest, and the illegal export into Mexico of spent solvents from the shoe manufacturing company. The indictment alleges that the hazardous wastes, which included trichloroethane, were driven by truck to the Tijuana border crossing, where one of the defendants allegedly offered $200 to a Mexican Customs official to allow the hazardous waste to enter Mexico. The Mexican official refused the alleged bribe, returned the truck to the U.S. Customs Service, and alerted U.S. Customs to the returned illegal shipment.

REGIONAL INITIATIVES

Region II Waste Oil Enforcement Initiative

Two cases commenced in 1990 under this initiative were resolved in FY 1992, U.S. v. Eastern of New Jersey, et al. and U.S. v. Lionetti

Oil Recovery. These companies had been charged with violations of RCRA used-oil regulations in 40 CFR Part 266. The consent decrees, which have a five year duration, included penalty and injunctive relief provisions. Under the decrees, Eastern will pay a penalty of $195,000 and Lionetti will pay a penalty of $75,000. The decrees also incorporate workplans, exceeding the regulatory requirements, to ensure that the facilities do not handle hazardous waste fuel and that they manage used oil fuel properly. Significant stipulated penalties are included to promote compliance with the workplan.

State RCRA/CERCLA Enforcement Actions

State of Arizona v. Allied Aircraft Sales, Inc.: On January 6, 1992, the Arizona Department of Environmental Quality and the Attorney General's Office signed a consent judgment with Allied Aircraft Sales, Inc. of Tucson. In the consent judgment, Allied agreed to pay a penalty of $120,000 and proceed with the clean up of its property. In its complaint, the State alleged that Allied had illegally disposed of more than 2900 tons of aluminum dross, containing high levels of lead and cadmium, in the Los Reales Landfill. An estimated 3000 to 4000 tons of material remained at the Allied property. Aluminum dross is a by-product of an aircraft smelting process which involves the melting of aircraft parts to recover aluminum. The complaint alleged several violations of the Arizona Hazardous Waste Management Act including illegal treatment, storage, or disposal of hazardous waste without a permit, failure to perform a hazardous waste determination, failure to prepare a manifest before transporting hazardous waste off-site, and failure to comply with Arizona Department of Transportation regulations. Allied agreed to submit a sampling plan for two existing dross piles and to test the soil and concrete at its facility for possible contamination.

State of Arizona v. Cortina: On September 25, 1992, two men from Tolleson, Arizona pled guilty to charges that they had dumped barrels of toxic chemicals in the desert near Avondale, Arizona. According to the indictment, drums of hazardous waste from the Phoenix and San Diego warehouses of Atlas Construction Supply were dumped in the desert in September and November of 1991. The drums contained materials that were ignitable, corrosive, or toxic. As part of their plea agreements, the defendants agreed to perform community service relating to the environment.

State of Arizona v. Nucor Corp.: On September 15, 1992, the federal district court for Arizona approved a $1.275 million settlement between Nucor Corp. and the Arizona Department of Environmental Quality ("ADEQ"). ADEQ had brought an action against Nucor under CERCLA in an effort to clean up groundwater in West Central Phoenix. To date, three plumes of groundwater in that area have been identified as contaminated with the industrial chemicals trichloroethylene (TCE), 1,1-dichloroethylene (DCE), and tetrachloroethylene (also known as perchloroethylene, or PCE). Nucor operated as an electronic components manufacturing firm at a facility known as the West Osborn Complex.

State of Oregon v. Mark Keister: In the first case in which the Oregon Department of Environmental Quality has obtained a criminal search warrant, investigated possible criminal activity and referred hazardous waste violations to a District Attorney for criminal prosecution, Mark Keister was tried in Clackamas County District Court on May 26, 1992, found guilty of four environmental crimes, and sentenced to spend 72 hours in jail, 36 months' probation, and to pay a total of $15,000 in fines.

In re: Safety-Kleen Envirosystems Co. of Puerto Rico, Inc.: Since early spring of 1992, the Environmental Quality Board's (EQB) Land Pollution Control Program personnel became suspicious of several incidents that they thought were taking place at the aforesaid company's facilities at Manati, Puerto Rico. Safety-Kleen, whose business is to provide services of recollecting, transporting and disposing all hazardous and non hazardous solid waste, was suspected of accumulating large quantities of hazardous waste for extended periods of time (over the regulatory limit of 90 days); for transporting hazardous solid waste out of the company's premises without the filing of the required manifests; for accumulating hazardous solid waste on unauthorized locations and other environmental irregularities. A investigation was subsequently ordered.

Surprisingly, though, the defendant's parent company made an unexpected internal environmental audit on the Manati plant; all the company's logs and books were completely overhauled. As a result, the Manati's plant top management was abruptly substituted, and voluntarily the parent company's representatives submitted all the informations they gathered during the audit to both the EQB and the EPA. Subsequently, the EQB issued an administrative order against Safety-Kleen (Manati) and assessed the unprecedented amount of $3.3 million as proposed penalty for several violations to the EQB's Regulations for the Control of Hazardous Solid Waste. To the EQB's record, this penalty was the largest ever assessed against a single, private company. Finally, the company agreed to pay EQB $1.1 million for the violations mentioned in the order; and included an additional amount of $350,000 to settle other additional violations, making this the largest single penalty ever collected by the EQB.

Ram Leather Care (Charlotte, NC): The State of North Carolina brought an administrative enforcement action against Ram Leather Care, located in Charlotte, North Carolina. The company is a dry cleaning facility specializing in leather, suede, and furs. During a state inspection, open drums of waste mineral spirits were found stored at the facility, and inspectors discovered that some of the contents of the drums had been discharged to the ground. Sampling indicated that boiler "blow down" was contaminated with tetrachloroethylene and other organics, which are classified as hazardous wastes under RCRA. In addition, groundwater supplies within 1/2 mile of the facility were found to contain tetrachloroethylene and related organic contaminants. A Compliance Order was issued by the State to address the soil and ground water contamination.

T-L Bar Ranch and Flasher Barricades, Inc. (Utah): A Stipulation and Consent Order was signed with Commercial Beef, Inc. doing business as the T-L Bar Ranch and Flasher Barricades, Inc. for operating a hazardous waste storage and disposal facility without prior application for or approval of a hazardous waste operation plan. Hazardous waste was leaked and spilled on the land and regulated hazardous waste was land disposed. Containerized hazardous waste was being stored. A penalty settlement of $100,000 was levied with $26,000 deferred, provided there was compliance with the Consent Order. In addition, a sum of $5,645.88 was to be paid to the Utah Department of Environmental Quality as reimbursement for laboratory analytical and other costs incurred.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Enforcement (Superfund)

Superfund Information Request Initiative

Enforcement of CERCLA § 104(e)(2) information requests continues to be a high priority of the Agency's Superfund enforcement program. Compelling compliance with such requests helps to generate acceptable settlement offers from PRPs. PRPs will, for example, be more willing to settle when they are assured that other parties are not escaping participation by ignoring EPA's information requests or filing incomplete responses.

The Agency launched a national initiative to emphasize enforcement of CERCLA § 104(e)(2) requests in September 1989. This emphasis was continued in FY 1992 as the Agency not only continued to litigate previously filed cases but also filed several additional cases of this type. The Agency has now filed over thirty such civil judicial actions (not including administrative orders it has issued pursuant to CERCLA §104(e)(5)(A)). For §104(e)(2) enforcement, fiscal year 1992 was a highly successful year in several respects, including collection of record penalties and development of favorable case law. Both of these areas are discussed below;

U.S. v. Asarco, Inc., (D. Kan.): The $453,750 penalty in this case represents the largest penalty ever for noncompliance with a CERCLA information request. The District Court for the District of Kansas approved the settlement containing the record penalty on March 9, 1992. In addition to the penalty, the consent decree obligates Asarco to provide a full response to EPA's information request and to certify the completeness of such response, at the risk of incurring liability for stipulated penalties if the response is again found to be inaccurate or lacking.

EPA's enforcement action arose from Asarco's failure to furnish information relating to its involvement with a Superfund site in Kansas City KS known as the Kansas City Structural Steel site. On August 30, 1990, Region VII sent a request for information pursuant to CERCLA §104(e)(2) to ASARCO, seeking, among other things, documents regarding ASARCO, Inc.'s relationship with the Consolidated Kansas City Smelting and Refining Company (Consolidated), which operated a lead and silver smelter at the site from 1880 to 1901. In October, 1990, Asarco responded that its relationship with Consolidated had been very limited (e.g., that it had merely been a shareholder of Consolidated's) and that it did not have many of the requested documents. The Agency subsequently confirmed, however, that the relationship between the two corporations was much closer (i.e., Consolidated had been a subsidiary of Asarco's) and that Asarco did have many of the requested documents. In October, 1991, Asarco provided EPA with various records documenting its parent-subsidiary relationship with Consolidated around the turn of the century.

After reviewing the records, EPA issued a unilateral administrative order pursuant to § 106 to Asarco on December 11, 1991. The order obligates Asarco to coordinate and cooperate with the current landowner in the implementation of the cleanup, which includes stabilization and solidification of lead-contaminated soils.

The previous record §104(e) penalty was a $142,000 fine involving Crown Roll Leaf, Inc.'s failure to furnish information regarding the Cannons Engineering sites in Massachusetts and New Hampshire.

U.S. v. Ernest Barkman, (E.D. Pa) : In the first §104(e)(2) case to go to trial, the United States received a very favorable opinion from the court. The defendant, Ernest Barkman, failed to respond adequately and in a timely fashion to a request from Region III to provide information pertaining to a release of hazardous substances at the Welsh Landfill Superfund site in Honey Brook, Pennsylvania. Mr. Barkman is the owner and operator of the landfill and is a PRP for the cleanup of the contamination at the site. Mr. Barkman admitted at trial that there was a delay in his compliance with the information request. He contended, however, that the government did not prove that the delay was unreasonable. The court in its opinion held that the 700-plus day delay in response was per se unreasonable. In addition, the court examined and dismissed as unconvincing a number of reasons for the delay ranging from his illiteracy to the incarceration of his wife's accountant. The court disposed of these contentions by finding that Mr. Barkman was represented by sophisticated counsel and was able to provide more information in a more expedient fashion than he did in response to EPA's request. Having found the defendant liable, the court determined that a "substantial penalty" was appropriate under the circumstances. The court therefore awarded EPA a penalty of $38,500.

U.S. v. Pretty Products, Inc., et al., (S.D. Ohio): On December 13, 1991, the District Court for the Southern District of Ohio, Eastern Division, issued a decision upholding the Agency's authority to request information from a parent corporation respecting its relationship to -- and ability to pay for -- the CERCLA liability of a subsidiary corporation. In this case, EPA served §104(e) information requests on Pretty Products' parent, Lancaster Colony Corp., to determine whether Lancaster was a PRP for §107 cost recovery. Pretty Products is a PRP at the Coshocton Landfill, Coshocton, Ohio. Both parent and subsidiary corporation refused to respond, challenging EPA's scope of authority under CERCLA §104(a). The court affirmed EPA's information gathering authority. The court reasoned that, given the remedial nature of CERCLA, Congress intended a broad reading of EPA's §104(e)(2) authority. Consequently, the court directed the defendants to comply fully with Region V's requests related to the Coshocton City Landfill site.

Cost Recovery

As part of EPA's aggressive Superfund Enforcement policy, the Agency brought hundreds of cases in the Federal Courts during FY 1992, representing millions of dollars in cost recovery. In addition to the significant advancements EPA made in cost recovery for FY 1992, EPA successfully argued for new legal precedent and more firmly established prior precedent under the CERCLA statute in the Federal Courts. Following are synopses of a few of these cases, representing a vast array of Superfund judicial enforcement activities.

U.S. v. Akzo Coatings of America (6th Cir.): On December 5, 1991, the Sixth Circuit Court of Appeals issued a favorable decision in the above case, which was a challenge to a Superfund consent decree. The State of Michigan appealed the July 18, 1989, entry of a consent decree between the United States and twelve defendants which requires the defendants to perform remedial work at the Ross Township Site in Michigan. The remedial work includes the possible use of soil flushing to remove volatile organic compounds from the soil. The state objected to the use of soil flushing, asserting that it will not meet the state's anti-degradation law, which it claims is an Applicable or Relevant and Appropriate Requirement (ARAR). The District Court found that the anti-degradation law is an ARAR, but that the remedial action plan will meet the requirement. The state appealed the entry, while the defendants appealed the determination that the anti-degradation law is an ARAR.

The Court of Appeals agreed with the District Court that review of the consent decree should be limited to the administrative record, applying the arbitrary and capricious standard, and specifically rejected the Western District of Oklahoma's opinion in Hardage that EPA's selection of a remedy should be reviewed de novo. The Court of Appeals also agreed with the District Court that Michigan's anti-degradation law constitutes an ARAR within the meaning of CERCLA §121(d)(2), but that the remedial action as a whole can attain all ARARs. In addition, the court found that EPA implicitly waived the ARAR, but the state did not meet its burden to show that the waiver was unjustified.

U.S. v. Alcan Aluminum Corp., and Cornell University (N.D.N.Y.) : On January 15, 1991, the District Court in the Northern District of New York granted the government's summary judgment motion finding Alcan Aluminum Corp. liable as a generator of hazardous substances deposited at the PAS Superfund Site in Oswego, New York. The court specifically rejected the defendant's argument, that the waste was covered by the "petroleum exception" since the emulsion contains levels of metals designated as hazardous substances well below that found in virgin oil. The court concluded that the petroleum exclusion does not warrant inclusion of oil which has become contaminated with hazardous substances through use. The court also found Cornell University jointly and severally liable, but required a hearing to determine the extent of Cornell's fair share of the clean up costs.

U.S. v. American Cyanamid and Rohm & Haas (D.R.I.): American Cyanamid Co. and Rohm & Haas Co. have paid the United States $4.1 million under rulings issued by the District Court for the District of Rhode Island in March, April, and July of 1992 for past costs related to cleaning up the Picillo Superfund Site in Coventry, Rhode Island. They were also ordered to pay all of EPA's future costs of additional cleanup activities at the site; the U.S. is about to issue a demand for over $500,000 in enforcement costs. The court found the defendants liable in 1990 on summary judgment based on a novel application of collateral estoppel as generators under CERCLA §107(a)(3) for arranging for disposal of hazardous substances taken across state lines to the site in the 1970s. The defendants are multi-billion-dollar chemical companies.

The Picillo Site came to the attention of EPA and Rhode Island authorities when combustible chemicals exploded at the site in 1977, causing a huge fire. The site had been an illegal dump, and had links to organized crime. The costs for which EPA sought reimbursement were for the removal of over 10,000 barrels that contained solvents, explosives, pesticides, and other hazardous substances and of soil contaminated with PCBs and phenols.

The March 17, 1992, opinion provides EPA with favorable precedent on the standards for making defendants pay for Superfund site cleanups. The case should encourage defendants to settle and clean up sites rather than face the now-difficult odds of successfully challenging EPA's costs in court. The defendants argued that EPA spent too much money. After noting the defendants could have cleaned up the site themselves if they wanted to control costs, the Judge wrote: "[D]efendants should be embarrassed, after all [this] litigation, to claim that they understand the conservation of financial resources."

U.S. v. Berks Associates, Inc., et al. (E.D. Pa.): Several significant court developments occurred during FY 1992 in the litigation for Superfund costs regarding the used oil recycling site located in Douglassville, Berks County, Pennsylvania. In April 1992, the District Court for the Eastern

District of Pennsylvania granted the United States' motion to dismiss counterclaims alleging that EPA was liable as a site generator/operator because of EPA's 1972 clean-up activities related to Hurricane Agnes. On September 9, 1992, the court granted the United States' proposed case management order for this complex case, thereby setting a tight deadline to comply with the new civil justice reform plan of the Eastern District, and allowing the government to proceed expeditiously with formal discovery. Finally, on September 14, 1992, the court granted the motion to strike over eighty affirmative defenses, including a defense related to divisibility of harm. The opinion construes the Third Circuit's recent U.S. v. Alcan liability language favorably for the United States.

B.F. Goodrich v. Murtha, (2d Cir.): On March 12, 1992, the Court of Appeals for the Second Circuit affirmed the ruling of the district court in this case. The Second Circuit held that (1) CERCLA does not exempt municipal solid waste (MSW) from the definition of hazardous substances contained in §101(14), (2) the imposition of liability on municipal generators and transporters of hazardous substances (if proven) is consistent with the purposes of CERCLA, and (3) the Agency's construction of the statute as it applies to liability for MSW in the 1989 Interim Municipal Settlement Policy is reasonable and permissible under Chevron v. NRDC.

The court stated that contributors of MSW may be liable under CERCLA if there is evidence that there were hazardous substances are present in the wastes they disposed of at the site. Most importantly, the court specifically noted that, while liability might be imposed for the generation or transportation of MSW, under CERCLA §113(f)(1), courts have the authority to "allocate response costs using such equitable factors as the court determines are appropriate." The court specifically rejected the notion that the appropriate municipal share is based solely on the volume of municipal wastes contributed.

U.S. v. Builder's Hardware Finishers Inc., et al., (C.D. Cal.): The United States brought a CERCLA §107 cost recovery and CERCLA §104(e) penalties action against three defendants as a result of a removal action at the Builder's Hardware site in Los Angeles. The defendants are Builder's Hardware Finishers Inc., the operator of a plating shop that was destroyed by a fire, and Joseph and Eloy Duran, two officers of the company who exercised control over the handling and storage of hazardous substances at the facility. The action sought to recover all response costs EPA expended in performing an emergency removal at the site as well as penalties against Joseph Duran for his failure to respond to a CERCLA §104(e) information request. Builder's Hardware Finishers' Inc. failed to file an answer and a default judgment was issued as to them. In response to a summary judgment motion filed by the U.S., the District Court for the Central District of California ruled that Joseph and Eloy Duran were liable under CERCLA §107 in their capacity as individuals. After a trial as to costs and EPA's CERCLA §104(e) claim, the court awarded EPA 100% of its response costs, including all attorneys fees. In addition, the court ordered Joseph Duran to pay a penalty of $25,000 for his failure to respond to a CERCLA §104(e) information request.

U.S. v. ILCO, et al., (N.D. Ala.): On October 8, 1991, the District Court for the Northern District of Alabama entered its final judgment in United States v. ILCO, et al. The court awarded the United States $845,033 in CERCLA response costs, including prejudgment interest. The court also imposed a $3.5 million civil penalty on ILCO for the violations of RCRA, the Clean Water Act, and the corresponding Alabama statutes.

The United States brought this action against ILCO and its president, Diego Maffei, seeking reimbursement of CERCLA response costs, as well as for injunctive relief and civil penalties for violations of RCRA and the Clean Water Act. ILCO operated a secondary lead smelter in Leeds, Alabama, and disposed of toxic blast slag from the smelter at several locations around Leeds. The ILCO operation caused severe contamination of soil, surface water, and groundwater with lead and other heavy metals around the facility and at the various slag disposal locations. The case was tried in July and August 1988. On December 10, 1990, nearly two and one-half years after trial, the court issued its findings of fact and conclusions of law, finding ILCO and Diego Maffei, liable for CERCLA response costs, and for statutory violations. The court did not enter a judgment in 1990, but rather urged the parties to negotiate an appropriate judgment. The parties were unable to negotiate a judgment.

U.S. v. Marvin Pesses, et al. (W.D. Pa.): On March 30, 1992, the District Court for the Western District of Pennsylvania rejected the arguments of seventeen defendants that the sale of scrap materials and metals from manufacturing processes at the Metcoa Radiation Site in Pulaski, Pennsylvania, did not constitute an arrangement for disposal or treatment of hazardous substances. The site is a defunct metal reclaiming facility, operated by Metallurgical Company of America, Inc. (Metcoa) from 1975 to 1983. Metcoa handled low-level radioactive compounds and heavy metals, which EPA has alleged were improperly stored and resulted in releases to the environment.

In adopting the magistrate's report with minor revisions, the court held that the defendants are not relieved of liability simply because they received monetary consideration for their scrap materials in most instances. The court found that the defendant had treated the materials during processing of the scrap material, and disposed of the material when wastes were released to land and air during processing.

U.S. v. Paterson Sand and Gravel, Inc., (N.D. Ill.): On December 26, 1991, the District Court for the Northern Division of Illinois, Eastern Division, issued a ruling favorable to the government with respect to CERCLA statute of limitations in this case. The court held that the statute of limitations for a removal action begins to run on the date EPA's ROD is issued and not when the remedial investigation report was issued.

The defendant argued that EPA's "removal action" was "completed," and the statute of limitations therefore began to run, when the EPA's contractor issued its RI report on April 4, 1988. Since EPA had filed its complaint on September 13, 1991, the action was five months too late and barred EPA's action under CERCLA §113(g)(2)(A). The government argued that the removal action was not completed at least until EPA issued its no action ROD on September 14, 1988. The court agreed and held that the issuance of the ROD is an integral part of the RI/FS process, and therefore EPA's complaint was timely filed.

Reardon v. U.S., (1st Cir.): The United States Court of Appeals for the First Circuit sitting en banc, ruled (with one Judge dissenting) that the CERCLA provision authorizing EPA to impose liens on contaminated property violates the Due Process Clause of the Fifth Amendment. In the October 29, 1991, decision, the First Circuit agreed with the District of Massachusetts that §113(h) of CERCLA bars the federal courts from hearing pre-enforcement challenges to the merits of any particular lien, such as challenges to the liability which a lien secures, or to the conformity of that lien to the CERCLA lien provisions set out in §107(l) of the statute. However, the court held that a due process challenge to §107(l) was not precluded by the pre-enforcement review bar of §113(h), since Congress failed to clearly prohibit such a constitutional challenge when it enacted §113(h). In this respect, the First Circuit acknowledged that its holding conflicted with that of the Sixth Circuit and other courts.

The court then went on to find that a §107(l) lien resulted in a deprivation of a "significant property interest", by "clouding title, limiting alienability, affecting current and potential mortgages." Relying on the recent Supreme Court decision in Connecticut v. Doehr, the First Circuit concluded that "the CERCLA lien provisions, by not providing, at the very least, notice and a pre-deprivation hearing to a property owner who claims that the property to be encumbered is not 'subject to or affected by a removal or remedial action,' violate the fifth amendment due process provisions.

U.S. v. Rohm and Haas Company, et al., (E.D. Pa.): On April 24, 1992, the District Court for the Eastern District of Pennsylvania issued a ruling favorable to the government with respect to EPA's ability to recover CERCLA oversight costs incurred at a RCRA managed facility. In a case of first impression, the court ruled that the United States is not precluded from recovering all of its costs of responding to environmental hazards simply because it chose to manage the site under a particular administrative program. EPA had initially responded to a release of hazardous substances from the site under CERCLA, but then switched the site over to RCRA based on the RCRA/NPL listing policy, and deleted the site from the proposed NPL. The defendants argued that the RCRA remedy was exclusive and once EPA agreed to manage the site under RCRA, the government could not seek costs under CERCLA. They also argued that EPA was barred from

recovery by a RCRA administrative consent order under a res judicata or claim preclusion doctrine. The court found little support in the statutes or case law for the defendants' first argument and stated that "[w]ithout a clear statutory statement to the contrary, this CERCLA remedy must be upheld...." In regard to the second argument, the court found that the administrative consent order had a broad and sweeping reservation of rights clause that prevented any res judicata or claim preclusion defense. The court granted recovery of all of EPA's past CERCLA costs including interest and "any other appropriate and proper response costs shown to be due after the filing of this action and in the future." The decision was appealed by the defendants to the Third Circuit on June 1, 1992. In this case, EPA will, if the District Court decision is affirmed, recover $401,348.78 plus interest, representing 100% of past costs and all future costs incurred.

U.S. v. Summit Equipment and Supplies, Inc., et al., (E.D. Ohio): On July 14, 1992, the District Court for the Eastern District of Ohio, Northern Division, issued a ruling from the bench granting the United States' Consolidated Motion for Summary Judgment and holding the defendants liable for past ($1.2 million) and future costs ($16 million) related to the Summit Equipment and Supplies Superfund (SES) site in Akron, Ohio. Significantly, the court held that an auction sale of surplus, potentially usable machinery at low prices (e.g. "scrap" prices) constituted an "arrangement for disposal" under CERCLA. This ruling has broad implications for industry in that most companies which downsized in the late 1970s/early 1980s utilized the auction method of dissipating their surplus machinery.

PRP Clean-up Settlements

EPA attempts to reach settlements, usually represented by a consent decree filed in Federal District Court, with potentially responsible parties (PRPs). Settlements benefit both the EPA and PRPs by expediting cleanup and avoiding excessive litigation and transaction costs. PRPs realize the added benefits of having greater input and control over the process of gathering data from which a remedy will be selected by the Agency. Following are some representative consent decrees entered or lodged during FY 1992.

U.S. v. ABCO Industries, (D.S.C.) Medley Farms Superfund Site, Gaffney, Cherokee County, South Carolina : On March 27, 1992, the District Court for the District of South Carolina entered the proposed consent decree for the Medley Farms Superfund Site in Gaffney, Cherokee County, South Carolina. Defendants in this case include ABCO Industries, BASF Corporation, Colonial Heights Packaging, Ethox Chemicals, Evode-Tanner Industries, Milliken & Company, National Starch and Chemical Corporation, and Specialty Industrial Products. In addition to carrying out the remedial action, the settling Defendants agreed to pay $237,287 in past response costs.

The Medley Farms Superfund Site was previously operated as an industrial waste disposal facility. In May 1983, several thousand drums, a distinct chemical odor, and distressed vegetation were detected at the Site by the South Carolina Department of Health and Environmental Control. A cost recovery action for a removal action occurred in June of 1986, and a resulting settlement for 83% of the removal costs was concluded. EPA Region IV issued the ROD for the remedial action on May 29, 1991.

U.S. v. Aerojet, (D.S.C.) Carolawn Superfund site in Fort Lawn, South Carolina: On December 4, 1991, the District Court for the District of South Carolina entered the consent decree for performance of the remedial design and construction for the Carolawn Superfund site in Fort Lawn, South Carolina. The Site was used as a storage facility for a solvent recovery operation. Under the consent decree, the twenty-five defendants will design the remedy and install a groundwater extraction and treatment system for implementation of the remedy. The remedial design and construction work is estimated to cost $1,400,000.

U.S. v. Agway, et al., (N.D.N.Y.) Fulton Terminals Site, Fulton, New York: A consent decree for the Fulton Terminals Site was entered in the District Court in December, 1991. It requires that 57 settling defendants implement the remedial action selected by EPA; pay $500,000 in settlement of the agency's claim for past costs; and pay EPA's RD/RA oversight costs through the first two years in which the defendants operate a groundwater pump and treatment system at the site. The remedy will cost approximately $5 million to perform.

Also, an Administrative Settlement between EPA and two federal agencies -- Griffiss Air Force Base in Rome, New York, and the Veterans Administration Medical Center, in Canandaigua, New York -- is effective simultaneously with the Decree. It requires that the agencies pay $10,854 and $17,172, respectively, toward EPA's oversight costs and past costs, and contribute to the implementation of the remedy.

The Fulton Site was active from 1971 through 1977 as a staging and storage area for bulked wastes scheduled for incineration at the Pollution Abatement Services (PAS) facility in neighboring Oswego. The remedy includes, inter alia, excavation and treatment of soils in the area of former storage tank areas, and extraction and treatment of contaminated groundwater.

U.S. v. City of Algoma, (E.D. Wi.) Algoma Municipal Landfill, Algoma, Wisconsin: On December 6, 1991, a RD/RA consent decree was lodged with the District Court for the District of Wisconsin, Eastern Division concerning the City of Algoma Municipal Landfill. The State of Wisconsin is also a plaintiff in the action. The decree requires the City of Algoma and eight generator PRPs to implement the remedy selected by the ROD, which includes constructing a new cover over the main portion of the landfill in accordance with current Wisconsin Department of Natural Resources (WDNR) standards, extension of the cover over the other portions of the site if warranted by further investigation, installation of groundwater monitoring walls, and fencing the site. The settling defendants will also reimburse both EPA and the State of Wisconsin for their future oversight costs and pay 90% of EPA's past oversight costs. The total value of this settlement is approximately $1.3 million. The Algoma Municipal Landfill is a 13 acre former municipal landfill located three miles west of Algoma, Wisconsin. The City of Algoma operated the landfill from 1969 to 1983. The main portion of the landfill was closed in accordance with the 1983 standards of the WDNR, but it does not conform to current WDNR standards. There are three other smaller disposal areas believed to contain construction debris, asbestos, and animal carcasses. Monitoring detected an exceedance of the Maximum Containment Level (MCL) for cadmium; iron and manganese in excess of Federal Secondary MCLs; and benzene, iron, and manganese in excess of Wisconsin enforcement standards. EPA placed the site on the NPL in July 1987. A group of the PRPs performed the RI/FS and EPA issued its ROD on September 29, 1990.

U.S. v. Allied Signal, et al., (N.D.N.Y.) Clothier Disposal Site, East Granby, New York: A consent decree was entered in June, 1992 in connection with the Clothier Disposal Superfund Site. The settlement, with 24 generator PRPs, provides for reimbursement of $2.525 million in past costs, plus a $25,000 penalty paid by one of the defendants, Shell Oil Company, for noncompliance with a removal order under §106 of CERCLA.

The Clothier Disposal Site is a National Priorities List site. From 1986 through 1988, a three-phased removal action, involving the removal of drums of hazardous substances, was conducted on site. The majority of the PRPs carried out the first two phases of the removal action under an administrative order; the third phase was performed by EPA after seven PRPs (including Shell) failed to comply with a unilateral order for this phase of the removal.

U.S. v. Allied-Signal Inc., et al., (D.S.C.) Bluff Road Superfund site in Columbia, South Carolina: The District Court for the District of South Carolina entered the consent decree for performance of the RD/RA at the Bluff Road Superfund site in Columbia, South Carolina. The site was operated by South Carolina Recycling & Disposal, Inc. in the 1970's as a chemical recycling and disposal facility. In 1982 and 1983, over 7,500 drums and contaminated soil and debris were removed from the site as part of a surface cleanup. EPA recovered its costs for this cleanup under a court judgment. Under the consent decree, the three of the defendants will conduct the RD/RA for the site, which consists of extraction and treatment of contaminated groundwater, and soil vacuum extraction to remove volatile organic compounds from site soils. The RD/RA is expected to cost $5,574,984. In addition, under the decree the 30 defendants will pay EPA $2,304,628 in past response costs, representing virtually a 100% recovery.

U.S. v. American Seating Company, et al., (W.D. Mi.) Folkertsma Refuse Site, Walker, Michigan: On August 3, 1992, a consent decree was entered in the District Court for the Western District of Michigan which requires eleven defendants to pay past costs and to undertake RD/RA at the

Folkertsma Refuse site in Walker, Michigan. This site is a former landfill that accepted primarily industrial waste, the majority of which was foundry sand. Contaminants detected at the site include volatile organic compounds, semi-volatile organic compounds, poly-chlorinated biphenyls, pesticides, and metals. Pursuant to the consent decree, the defendants will perform the RD/RA, which consists of construction of a clay cap, excavation of sediments from an on-site creek and two surface bodies, ground water and drainage water monitoring, installation of a fence, and implementation of institutional controls. The cost of the remedy will be approximately $1.5 million. The defendants will also reimburse EPA for $919,227 in past costs, thereby funding 96% of the combined remedy and past costs for this site.

U.S. v. Auto Ion Chemicals, Inc., (W.D. Mi.) **Auto Ion Chemicals, Inc. Superfund Site, Kalamazoo, Michigan**: On April 7, 1992, the District Court for the Western District of Michigan entered a consent decree for unrecovered past costs at the Auto Ion Chemicals, Inc. facility in Kalamazoo, Michigan. Under the decree, EPA will receive $225,000 from twenty PRPs including the City of Kalamazoo and $35,000 from the U.S. Navy for past response costs incurred at the facility through December 27, 1989. The Agency's past costs as of that date were approximately $294,000. The Agency will also be recovering interest on the $225,000 since October 15, 1991. A decree for the remedial design/remedial action (RD/RA) work for the first operable unit at the facility was entered in March of 1991. Past response costs were not addressed under the RD/RA consent decree, although oversight costs for the work were. The majority of the defendants agreeing to the cost recovery decree are newly identified PRPs. However, the biggest contributors to this consent decree, the City of Kalamazoo and the U.S. Navy, were both recalcitrants from the RD/RA consent decree. A ROD for the second operable unit is scheduled for 1993.

U.S. v. Automation Components et al., (D.N.J.) **SCP/Newark NPL Site, Newark, New Jersey**: On July 16, 1992, three consent decrees were lodged in the District Court for the District of New Jersey with Matlack, Inc., Randolph Products Company, Inc., Sigmond Presto and Dominick Presto in U.S. v. Automation Components et al. involving the SCP/Newark NPL site. Matlack and Randolph Products agreed to pay substantial penalties for their noncompliance with orders issued by EPA for a removal action at the site. All defendants agreed to pay EPA's oversight costs and enforcement costs for this action.

EPA issued four orders to PRPs to cooperate in performing a removal action at the Scientific Chemical Processing (SCP) facility in Newark, New Jersey. Over 130 PRPs performed the action but some PRPs did not comply with the order. EPA brought an action against the viable noncomplying parties for penalties and oversight and enforcement costs and against several other non-participants for costs. EPA obtained default judgments against two parties that declared bankruptcy, and settled earlier with a third party.

In this series of settlements, Randolph Products and the estate of the former owner of the company agreed to pay a $300,000 penalty and an $85,000 cost share. Matlack agreed to pay a $125,000 penalty and a $75,000 cost share. The partnership of Presto and Sigmond, and Dominick Presto, as an individual, agreed to pay $50,000 in costs. EPA expects to obtain 100% of its costs and interest in this matter.

U.S. v. AVX Corp. et al., (D. Mass.) **New Bedford Harbor Superfund Site, New Bedford, Massachusetts**: On January 29, 1992, the United States District Court for the District of Massachusetts entered the second consent decree for the New Bedford Harbor Superfund site. The New Bedford Harbor NPL site encompasses the Acushnet River estuary, New Bedford Harbor, and portions of Buzzards Bay in southeastern Massachusetts. The National Oceanic and Atmospheric Administration (NOAA) initiated this case in 1983 by filing a natural resource damage case against manufacturers that had dumped PCBs into the harbor, causing widespread contamination of harbor sediments and biota. Suits brought by EPA and the Commonwealth of Massachusetts were consolidated with NOAA's case. Due to the complex nature of remediating harbor sediments, EPA decided that the U.S. Army Corps of Engineers should handle the remediation.

The second decree settles the liability of defendant AVX Corporation with plaintiffs EPA, NOAA, and the Commonwealth of

Massachusetts. AVX Corporation is a former operator of a capacitor manufacturing plant on New Bedford Harbor responsible for a substantial portion of the PCB dumping. Under the consent decree, AVX Corporation paid $66 million into an escrow account for remedial activities and restoration of natural resources. The account balance is now over $73 million. The first consent decree, which settled the liability of defendants Aerovox, Inc. and Belleville Industries, Inc. for a total of $12.6 million, was entered by the court on July 16, 1991.

On September 4, 1992, the United States and the Commonwealth of Massachusetts lodged a third and final consent decree for this site, between plaintiffs EPA, NOAA, and Massachusetts and defendants Federal Pacific Electric Company (FPE) and Cornell-Dubilier Electronics, Inc. (CDE). CDE operates a capacitor manufacturing plant on New Bedford Harbor and is responsible for PCB dumping. FPE is a former parent corporation of CDE. Under this consent decree, CDE and FPE will pay a total of $21 million to the plaintiffs for remediation and natural resource damages.

U.S. v. BASF, et al., (E.D. MI.) Rasmussen Superfund Site, Green Oak Township, Michigan: On April 30, 1992, Judge Newblatt of the District Court for the Eastern District of Michigan, Southern Division entered the RD/RA consent decree in resolution of this CERCLA §§ 106 and 107 case. This consent decree embodies an agreement between the Agency and ten PRPs who were linked as generators to the Rasmussen Site, which is located in Green Oak Township, Michigan. It provides for the payment of 100% of the Agency's past and future costs and calls for the construction of a "closed loop" groundwater extraction and treatment system for the affected groundwater zones. The groundwater must now be treated to health based cleanup standards before being discharged into the seepage basin. In addition, the decree requires a RCRA Subtitle C cap to be constructed over a portion of the facility. The total value of this settlement is approximately $12 million.

U.S. v. Beazer East, et al., (N.D. Ohio) Summit National Facility, Deerfield, Ohio: On February 20, 1992, the District Court for the Northern District of Ohio entered a consent decree between the United States and Beazer East, Inc., f/k/a/ Koppers, Inc., regarding the Summit National Facility in Deerfield, Ohio. Pursuant to the terms of the decree, Beazer East will pay the United States the sum of $2,422,730.57 together with interest on the sum of $2,400,000, such sum accruing from December 13, 1990, as reimbursement for past costs incurred by the EPA at the site. With this settlement and a settlement reached with named defendant, Mansfield Graphics, Inc. (addressed below), the EPA will recover 98% of its past costs at the site. The Department of Justice (DOJ) had previously lodged a consent decree on behalf of the EPA on June 30, 1990. Pursuant to the decree, 28 companies would undertake the $34 million clean-up at the Site. Because Beazer East and Mansfield refused to be signatories, DOJ filed an action against both companies for reimbursement of past costs incurred by EPA.

B.F. Goodrich Company v. Murtha, et al.; U.S. v. AMF, Inc., et al. (D. Conn.) Beacon Heights Landfill and Laurel Park, Inc. Superfund Sites, Naugatuck, Connecticut: On August 10, 1992, the District Court for the District of Connecticut entered two consent decrees in this case. The first is a CERCLA § 107 action that requires the defendants to pay $5.375 million as reimbursement for past and future costs at the above two sites. The settlement also includes a number of non-monetary obligations on the part of the defendants, including providing full and unrestricted access to both sites and a dismissal of claims against the United States Government entities. The second settlement entered, a consent decree under CERCLA §§106 and 107 and RCRA § 7003, lodged in June of 1991, addresses RD/RA at the Laurel Park Landfill in Naugatuck, Connecticut. In addition to performing the work, the settling defendants have agreed to reimburse $500,000 of past EPA response costs, and to pay for all but the initial $200,000 of the oversight costs. EPA estimates the value of the remedial action and O&M portion of the settlement to be $19.8 million.

B.F. Goodrich/Airco Site, Calvert City, Kentucky: On June 29, 1992, the District Court for the Western District of Kentucky (Louisville Division) entered a consent decree in connection with the B.F. Goodrich/Airco Site in Calvert City, Kentucky. The decree obligates the two settling defendants (B.F. Goodrich and the BOC Group, Inc.) to undertake the cleanup, which

includes soil excavation and ground-water pump-and-treat. It also obligates the PRPs to reimburse the U.S. for nearly all of its past costs.

Cabot Carbon/Koppers Site, Gainesville, Florida: On April 20, 1992, the District Court for the Northern District of Florida entered a consent decree in connection with the Cabot Carbon/Koppers site in Gainesville, FL. The decree obligates the settling defendant (Cabot Corporation) to undertake the cleanup for its portion of the site. This portion is the former site of Cabot's pine tar and charcoal manufacturing operation; it was subsequently developed into a shopping center. Cabot's response action includes lining the ditch located on this portion of the site; continued operation of an already existing system for removing and treating ditch water; and, certain ground-water pump-and-treat. The decree also obligates Cabot to reimburse the U.S. for over $416,000 in past costs. Region IV has previously ordered other PRPs to conduct the remainder of the cleanup.

U.S. v. Cannons Engineering Corporation et al. (D. Ma.) Cannons Engineering Corporation Superfund Sites, Bridgewater, Massachusetts: On September 22, 1992, the District Court for the District of Massachusetts entered the final consent decree for settlement of response costs at the four sites known collectively as the Cannons Engineering Corporation Superfund Sites. The Cannons Engineering Corporation operated a hazardous waste incineration facility in Bridgewater Massachusetts. Wastes from the Bridgewater facility were transshipped to a site in Plymouth, Massachusetts, to the Tinkham's Garage Site in Londonderry, New Hampshire, and to the Gilson Road Site in Nashua, New Hampshire. The State of New Hampshire and the Commonwealth of Massachusetts are also parties to the consent decrees.

Settling defendants consist of sixteen corporations and three individuals. With entry of these ten decrees, the governments recovered approximately 87.4% of their past and expected future costs for cleanup at the Cannons Sites. These settlements represent the grand finale in litigation against parties who refused to participate in an earlier string of settlements involving hundreds of parties. EPA's pursuit of the recalcitrants sends a message to PRPs that the government will pursue its claims against those responsible for contamination at Superfund sites. This provides a strong economic incentive for corporations and individuals to dispose of hazardous substances correctly and may lead to settlement of future cases in a more timely manner.

U.S. v. Chevron Chemical Company, et al. (C.D. Cal.) Operating Industries, Inc. Superfund Site, California : On March 30, 1992, the District Court for the Central District of California, after a hearing on the same day, entered the Third Partial Consent Decree resolving claims for a significant portion of the third operable unit. This settlement, with an estimated value of $130 million, is between the United States and California against 178 PRPs for work, and payment of state and federal past costs and oversight. One group of defendants (the "Work Defendants") will perform remedial design and construction of landfill gas control, surface water management, and landfill cover systems with the exception of certain "Excluded Work" carveouts. Work Defendants will operate and maintain these systems for three years. The settlement also includes approximately thirty-five Cash Defendants who made a cash payment in lieu of performing work.

The Operating Industries, Inc. Site is a 190-acre, former landfill that operated for thirty-six years, accepting industrial and municipal waste. In two earlier consent decrees, EPA has entered into settlements for the first two operable units for site control and monitoring, and the construction of an on-site leachate treatment plant.

U.S. v. Ciba-Geigy Corporation, (S.D. Ala.) Ciba-Geigy Superfund Site, McIntosh, Alabama: On November 18, 1992, the District Court for the Southern District of Alabama entered a consent decree requiring Ciba-Geigy Corporation to conduct a remedial design and remedial action, requiring Ciba-Geigy to clean up soil and groundwater contaminated by a variety of chemicals including chlorinated pesticides (particularly DDT and its breakdown products), herbicides, volatiles and semi-volatiles at its McIntosh, Alabama Plant. This agreement is one of the largest private party settlements in Superfund History, valued at approximately $120 million. The company has also agreed to reimburse EPA for $322,000 in past costs, as well as all future oversight cost incurred by EPA.

The remedial action includes soil removal, treatment by incineration, and storage of treatment residuals in a land vault on the McIntosh site. The consent decree covers the second of four phases of remedial action planned for the site. The consent decree also requires that Ciba-Geigy Corporation pay all future costs incurred by EPA in oversight of the remedial action and reimbursement of past costs.

U.S. v. Cumberland International Corp., et al., (S.D. Tex.) Crystal Chemical Superfund Site, Houston, Texas: On January 6, 1992 the government lodged a partial consent decree in the United States District Court in the Southern District of Texas to resolve the litigation in the above case. Defendants Southern Pacific Transportation Company and Voluntary Purchasing Groups, Inc. agreed to pay the United States $3 million for past cost for the Crystal Chemical Superfund site. The government also filed a stipulation of dismissal without prejudice for defendants Joseph Eller, Wilton Vardeman, John Person, Cumberland Chemical Corporation and Cumberland International Corporation. The stipulation will be effective upon the date of entry of the consent decree with Southern Pacific Transportation Company and Voluntary Purchasing Groups, Inc. The Crystal Chemical Superfund Site is located in Houston, Texas.

John Deere-Ottumwa Works Site, Ottumwa, Wapello County, Iowa: On September 25, 1992, the District Court for the Southern District of Iowa, Central Division, lodged a consent decree settling some EPA claims against John Deere & Company, the property owner and operator at the John Deere-Ottumwa Works Site, and the State of Iowa Department of Transportation, an easement owner at the Site. The decree calls for recovery of $24,955 in past costs, and RD/RA valued at $104,000. The Site is currently used by Deere & Company for its manufacturing facility located in Ottumwa, Iowa. Under the September 1991 ROD, wastes shall remain buried in place based on a finding that 90% of the waste is effectively capped by pavement and buildings, and the low toxicity and mobility of wastes at the Site. The remedy also includes a statutory five year periodic review, continued surface and groundwater monitoring, fencing, and deed restrictions.

U.S. v. City of Dover et al., (D.N.H.) Dover Municipal Landfill, Dover, New Hampshire: On August 10, 1992, a CERCLA RD/RA action consent decree regarding the Dover Municipal Landfill in Dover, New Hampshire (site) was lodged in federal district court. Pursuant to the consent decree, 24 PRPs will perform cleanup activities at the site and reimburse EPA response costs. This agreement exemplifies EPA's successful use of the special notice procedures under CERCLA to obtain a strong settlement whereby private parties have to address environmental threats. Soon after the Region issued its ROD for the site, the case team obtained PRPs' agreement to perform immediately certain pre-design studies to clarify uncertainties noted in the ROD. Based on the ROD estimate, the injunctive relief and cost recovery secured by this settlement are valued at over $22 million, and represent roughly 95% of costs sought.

This settlement provides significant environmental benefits. The prompt design initiation will expedite site cleanup. Furthermore, implementation of the cleanup by the PRPs under the decree will protect a local reservoir which is the source of drinking water, will stop the degradation of the nearby Cocheco River, and will prevent direct contact with contaminated landfill material and leachate.

U.S. v. The Dow Chemical Company, Dowell Schlumberger, Inc. and KN Energy, Inc., (D. Wyo.) Mystery Bridge Road/U.S. Highway 20 Superfund Site, Natrona County, Wyoming: On October 2, 1991 a consent decree was entered in the District Court for the District of Wyoming concerning the Mystery Bridge Road/U.S. Highway 20 Superfund Site (a/k/a/ Brookhurst) located in Natrona County, Wyoming. This site includes a residential subdivision with extensive groundwater contamination. Pursuant to the consent decree, defendants will reimburse all of EPA's past costs, totaling $5.4 million, and will install an alternative public water system. The site was listed on the NPL in August, 1990.

U.S. v. Gencorp, Inc., et al., (N.D. Ohio) Fields Brook Superfund Site, Ashtabula, Ohio: On August 6, 1992, the District Court for the Northern District of Ohio entered a consent decree requiring PRPs to pay $1,250,000 in past costs incurred at the Fields Brook Superfund Site. Fields Brook is located near Ashtabula, Ohio. A number of facilities are located along the Brook

and contributed to the contamination in the brook's sediments and in areas alongside it. A group of PRPs are doing the remedial design for thermal treatment of the sediments and are also conducting a source control remedial investigation (RI). EPA filed its lawsuit for past costs against PRPs that were not doing work at the site. Subsequent to the settlement, the two groups of PRPs combined efforts to continue the design work and the RI. The settlement resulted in recovery of over 90% of past costs.

U.S. v. Harris Corporation. (M.D. Fla.) **Harris Corporation Site, Palm Bay, Florida:** A settlement involving Harris Corporation resulted in an agreement that the company would conduct an RD/RA for the first operable unit at the Site. The remedy consists of reviewing the existing groundwater remediation at the complex and performing necessary modifications to comply with the ROD requirements. EPA estimates the remedy will cost approximately $1.6 million. The corporation also agreed to pay up to $800,000 in future costs and $150,000 in past costs. The consent decree was entered in the District Court for the Middle District of Florida on October 25, 1991.

The site located in Palm Bay, Florida is owned by the Harris Corporation which operates a manufacturing facility at the site. Pursuant to Harris Corporation's request, EPA is currently drafting an Explanation of Significant Difference to modify the ROD and consent decree so it is consistent with the corporation's consent agreement between the corporation and the State.

U.S. v. The City of Jacksonville, Florida et al. (M.D. Fla.) **Pickettville Road Landfill Site, Jacksonville, Florida :** On April 24, 1992, the District Court for the Middle District of Florida entered a settlement pursuant to which thirteen settling defendants including the City of Jacksonville, Florida, Kerr-McGee Chemical Corporation, CSX Transportation, and Sherwin-Williams Company agree to (1) undertake implementation of a remedy valued at $9 million at the Pickettville Road Landfill Site in Jacksonville, Florida, and (2) pay the United States 100% (roughly $400,000) of its remaining unreimbursed costs incurred in connection with the site. The Pickettville Road Landfill was operated by the City of Jacksonville as a municipal dump for residential, commercial, and industrial wastes (including numerous CERCLA hazardous substances) from 1968 to 1977 when it closed. The remedy to be implemented by the settling defendants involves capping and long-term monitoring of this NPL site, plugging and abandonment of water supply wells located downgradient of the site, extension of city water supply lines to designated areas downgradient of the site, and restoration of a stream (Six Mile Creek) contaminated by wastes from the site.

U.S. v. Kowinsky Farms, Inc. et al. (D. Del.) **Coker's Sanitary Landfill Superfund Site, Kent County, Delaware:** On April 8, 1992, the District Court for the District of Delaware entered a consent decree for this Site. The decree involves two landowner defendants, Kowinsky Farms and Alberta Schmidt, and four generator defendants, McCrory Parent Corp., Rapid-American Corp., Nabisco Brands Inc., and Reichhold Chemicals Inc. The decree provides that generator defendants: (1) perform the $1.2 million remedy selected in the ROD; (2) perform the O & M at the site; (3) reimburse the United States $101,834 for its past response costs (representing 100% of past costs excluding interest); and (4) pay for EPA's future RD/RA oversight costs. The landowner defendants are to grant access, put up security fencing, and place deed restrictions, but are not responsible for other work because of financial hardship. The agreement also includes a natural resource trustee work plan that requires the defendants to conduct monitoring of surface water and sediments for future contamination and to pay $80,000 to the trustees (National Oceanic and Atmospheric Administration and Department of the Interior) for wetland restoration.

U.S. v. Lindsay Manufacturing Co. (D. Neb.) **Lindsay Manufacturing Superfund Site, Lindsay, Nebraska :** On April 9, 1992, the District Court for the District of Nebraska entered consent decree for the Lindsay Superfund Site located in Lindsay, Nebraska. The decree involves the owner/operator settling defendant, Lindsay Manufacturing Co., who generated and disposed of acid waste containing lead, chromium and zinc at the site as well as solvents and degreasers. Under the terms of the consent decree, the Defendant agreed to conduct the RD/RA for the above-referenced NPL site in accordance with the ROD issued in September, 1990, and to reimburse the U.S. 100% of all past and future costs. The

$3.6 million remedy includes a groundwater extraction system and a pilot project designed to evaluate the feasibility of a soil vapor extraction system for organics.

U.S. v. Mass Merchandisers, Inc., (W.D. Ark.) Arkwood, Inc. Site, Boone County, Arkansas: On September 9, 1992, the District Court for the Western District of Arkansas entered a consent decree in which Mass Merchandisers, Inc. (MMI), a prior owner of the Arkwood Superfund (NPL) Site in Boone County, Arkansas, agrees to implement a remedy selected for the site by EPA and pay more than $282,000 in costs previously incurred by the United States in connection with the site.

Waste from wood-treating operations conducted at the site from the early 1960's to 1984, principally pentachlorophenol and creosote, contaminated on-site soils and stormwater runoff. The remedy to be implemented by MMI is valued at $18 million and involves excavation and washing of soils, treatment of contaminated water, and on-site incineration of certain wastes.

McAdoo Superfund Site, Kline Township, Schuylkill County, Pennsylvania: On August 10, 1992, a consent decree for $2 million in remedial costs was lodged in the United States and lodged with the United States District Court for the Eastern District of Pennsylvania. When combined with the settlement under a prior decree, the total recovery for the site is $5.7 million of $6 million of all remedial costs associated with the first operable unit at the McAdoo site, representing a 95% recovery. The decree resolves the liability of International Flavors & Fragrances, Inc.; S & W Waste, Inc. (S & W); Kalama Chemical, Inc.; Champion Auto Generator Service, Inc.; Schulcz Electroplating, Inc.; McAdoo Associates, Inc.; Payso, Inc.; and Edward and Noreen Payez.

The McAdoo Associates Site is an eight acre tract of land located in Schuylkill County, Pennsylvania, that was once used for strip and deep mining of anthracite coal. In January of 1973, McAdoo began waste incineration and recycling operations at the site through the use of two rotary burners. From early 1981 to 1982, several PRPs disassembled and removed the incinerator buildings, and removed 6,790 drums and all but one of several 15,000 gallon and 10,000 gallon storage tanks containing hazardous waste. In 1983 and 1984, an RI/FS indicated the presence of organic and inorganic contaminants in the soil at the site in addition to the remaining storage tank.

U.S. v. McGraw-Edison Co. et al., (W.D. N.Y.) Olean Well Field Superfund Site, Olean, New York: A settlement involving the bankruptcy estate of W. R. Case and Sons Cutlery Company resulted in an agreement that the company would pay EPA $700,000 towards the Agency's past and future costs and also pay a $50,000 civil penalty for the company's failure to comply with a UAO to clean up the site. The consent decree was lodged in the District Court for the Western District of New York on September 24, 1992, and entered on November 24, 1992.

The settlement pertains to the recovery of costs incurred by the United States while cleaning up hazardous substances from the Alcas, AVX and McGraw-Edison manufacturing facilities at the Olean Well Field Superfund Site located in the Town of Olean, New York. W.R. Case was a 49% shareholder in the Alcas company and refused to comply to a UAO issued on February 7, 1986. The company also refused to join the August 10, 1989, partial consent decree between the United States and five other defendants.

U.S. v. Miles Diagnostics Corp., et al., (D.P.R.) Frontera Creek Superfund Site, Humacao, Puerto Rico (: A consent decree regarding the Frontera Creek Superfund Site, located on the eastern coast of Puerto Rico in Humacao, was lodged with the District Court in July. The decree requires implementation of remedial actions for the site and reimbursement to the U.S. for all outstanding past costs as well as future oversight costs.

The four defendants are Miles Diagnostics Corp.; Miles, Inc.; Cooper Development Co.; and Revlon, Inc. They are past and present owners and operators of an industrial facility at the site. The ROD specifying the remedies was issued in September 1991, and includes provisions for identification, excavation and removal of mercury-contaminated material. The work is estimated to cost about $1 million.

U.S. v. Motorola Corporation, et al., (D. Ariz.) North Indian Bend Wash Superfund Site, Scottsdale/Tempe, Arizona: On November 19,

1991, the District Court for the District of Arizona, Phoenix Division entered a consent decree in this case requiring the defendants to remediate contaminated groundwater through an extraction and treatment system and reimburse the state of Arizona and EPA for 100% of their future oversight costs. The consent decree addresses the groundwater contamination in the middle and lower aquifers of the North Indian Bend Wash Site. Contamination in the soils and upper aquifer unit of North Indian Bend Wash and all of South Indian Bend Wash will be addressed in separate actions.

The settlement will: (1) provide a potable water source for the city of Scottsdale using, as far as possible, existing facilities; (2) protect public health and the environment by precluding contamination of unaffected wells; and (3) provide for long-term management of the VOC contaminated groundwater through treatment designed to improve the regional aquifer. The remedial action involves constructing a groundwater monitoring system, a groundwater extraction system, and a groundwater treatment plant. The total estimated value of the settlement is $17,037,000.

Northside Sanitary Landfill Superfund Site, Zionsville, Indiana: On November 12, 1991, a consent decree for RD/RA was entered in the District Court for the Southern District of Indiana for the Northside Sanitary Landfill NPL Site. The decree requires the installation of a hydraulic isolation wall, leachate collection trench, monitoring, and capping parts of the landfill. The site consists of a landfill and adjacent recycling company, Environmental Conservation and Chemical Company which disposed of wastes at the landfill.

U.S. v. Petroleum Products Inc., et. al., (S.D. Fla.) Petroleum Products Superfund Site, Pembroke Park, Florida : On December 11, 1991, the District Court for the Southern District of Florida entered a consent decree between the United States and 19 PRPs (including CSX, the City of Miami, General Tire Corporation, and Safety-Kleen Corporation) which required the PRPs to design and implement an interim remedial action at the Site, a former waste oil refinery. The parties agreed to design and implement enhancement to a free-product recovery system which is estimated to cost $400,000.

The Petroleum Products Corporation (PPC) operated at the Site from approximately 1958 to 1971 as a processor and broker of waste oil and other hydrocarbon products. Contaminated sludges generated by the refining process were disposed of in unlined pits and reportedly were spread across the southern third of the Site, extending the contamination by approximately seven acres. The principal element of the Interim Action ROD is enhancement of the free-product oil recovery system located along the southern third of the Site. Subsequent RODs will address contaminated soils and groundwater.

U.S. v. Schlumberger Industries, (S.D. Il.) Crab Orchard Wildlife Refuge, Marion, Illinois: On August 27, 1992, the District Court for the Southern District of Illinois entered a consent decree negotiated in this CERCLA case. Under the terms of the decree, Schlumberger will clean up PCB contamination at the Crab Orchard Wildlife Refuge, which is located near Marion, Illinois. The cost of the cleanup is expected to be between $17,000,000 and $25,000,000. Most of these costs will be borne by Schlumberger; the remainder will be paid by the U.S. Department of the Interior, who is the owner of the site. The Crab Orchard National Wildlife Refuge contains areas that had been leased for industrial uses, including the manufacture of electrical equipment. Serious contamination problems caused by PCBs, heavy metals, and volatile organic compounds are a legacy of this activity. In 1987, EPA added the Refuge to the National Priorities List. In 1990 EPA issued a ROD, calling for on-site incineration or vitrification of PCB contaminated soils.

U.S. v. Schlumberger Industries, Inc., (D.S.C.) Sangamo Weston/Twelve-Mile Creek/Lake Hartwell PCB Site, Pickens County, South Carolina: On April 15, 1992, the Department of Justice lodged a consent decree in the District Court for the District of South Carolina, Anderson Division. The consent decree requires Schlumberger Industries, Inc., a PRP, to perform RD/RA of the Sangamo Weston/Twelve-Mile Creek/Lake Hartwell PCB Site (Operable Unit No. 1) in Pickens County, South Carolina. There have been releases of hazardous substances, including PCBs at the Sangamo manufacturing facility and six disposal areas known as the Breazeale property, the Dodgens property, the Cross Roads property, the Welborn property, the

Nix property, and the John Trotter property. The remedial action selected for Operable Unit No. 1 includes excavation and treatment of soils and related materials at the plant and six satellite sites, and extraction and treatment of contaminated groundwater at the plant and several satellite sites. The cost of the remedy is currently estimated in the range of $47 to $63 million. The agreement also includes recovery of past EPA costs of $742,000.

U.S. v. Schuylkill Metals of Plant City, Inc., et al., (M.D. Fla.) Schuylkill Metals Superfund Site in Plant City, Florida : On April 22, 1992, the United States District Court for the Middle District of Florida entered the consent decree for performance of the remedial design and remedial action (RD/RA) at the Schuylkill Metals Superfund Site in Plant City, Florida, a former battery recycling operation. Under the decree, the defendants will perform the RD/RA for the site, which consists of excavation and treatment of approximately 38,000 cubic yards of contaminated soil; treatment and disposal of contaminated groundwater and surface water; wetlands restoration and mitigation; and institutional controls including a conservation easement to assure that the wetlands remain undisturbed. The estimated cost of the remedy is $6,230,000.

U.S. v. Sherwood Medical Co., (M.D. Fla.) Sherwood Medical Superfund Site, DeLand, Florida: The United States District Court for the Middle District of Florida, entered a consent decree for the Sherwood Medical Superfund Site on February 3, 1992. In 1982, Florida Department of Environmental Regulation (DER) proposed the Site for inclusion on the NPL because of groundwater contamination. The groundwater is contaminated with trichloroethylene and tetrachloroethylene as a result of past waste disposal activities. The site is an active medical supply manufacturing facility owned and operated by Sherwood Medical Company. The facility is located just outside the city limits of Deland, Florida.

The consent decree requires Sherwood Medical, the sole PRP, to cleanup the groundwater and reimburse EPA for past costs. The interim remedial action includes installing a system of recovery wells in the on-site surficial aquifer; and pumping and treatment of the contaminated ground water using air stripping. The estimated capital cost for this interim remedial action is $400,000, with an annual operation and maintenance cost of $35,000.

U.S. v. Simpson Tacoma Kraft Comp., et al., (W.D. Wash.) Commencement Bay Nearshore/Tideflats Superfund Site, St. Paul Waterway Problem Area, Tacoma, Washington: On December 31, 1991, a consent decree in the above referenced case was entered by the District Court for the Western District of Washington. The consent decree is designed to settle the enforcement action under CERCLA §§106 and 107 at the St. Paul Waterway Problem Area of the Commencement Bay Nearshore/Tideflats Superfund Site. The complaint filed by the U.S. Department of Justice in this case also included a claim for relief under §311 of the Clean Water Act, and the consent decree contains a covenant not to sue under that provision of the statute. The consent decree requires the PRPs to assume responsibility for monitoring the effectiveness of a cap placed over contaminated sediment pursuant to a previous consent decree entered into with the State of Washington. The PRPs also agreed to reimburse the United States for: (1) all past costs through the date of the ROD, which total $354,536, (2) 60% of EPA's oversight costs from the date of the ROD through the date of entry of the consent decree; and (3) all future oversight and response costs. The consent decree also settles claims for natural resources damages by the National Oceanic and Atmospheric Administration, the U.S. Department of Interior, the State of Washington, the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe.

Sixty-Second Street Superfund Site, Tampa, Florida: On May 15, 1992, the United States District Court for the Middle District of Florida entered a consent decree for performance of the remedial design and remedial action (RD/RA) at the Sixty-Second Street Superfund Site in Tampa, Florida. Under the consent decree, four corporate generators will excavate and solidify contaminated soil, construct a cap over the property, and will operate a groundwater extraction and treatment system as required by the ROD. Two current landowner agreed in the consent decree to place long term deed restrictions on the property to help insure the integrity of the cap. The soil remedy is designed to protect the public from lead, chromium and cadmium, the

primary contaminants at the Site. The project is estimated to have a total value of $16,460,000. Under the consent decree, the defendants have also agreed to reimburse the U.S. for $914,395.69 in past response costs and to reimburse the U.S. for future response costs.

U.S. v. SKRL, et al., (N.D. Ohio) Petroleum and Power Maintenance (PPM) Superfund Site, Louisville, Ohio : On July 22, 1992, a consent decree was entered by the District Court for the Northern District of Ohio approving the agreement between the United States and USX, Chevron, Chrysler, and SKRL Diecasting, for payment of past costs incurred by EPA from 1985 to present while responding to a release of hazardous substances (PCBs) at the Petroleum and Power Maintenance (PPM) site in Louisville, Ohio. Pursuant to the terms of the decree, the settling defendants will pay 70% ($230,000) of U.S. past costs and interest, and the Department of Defense (Navy) will pay EPA $20,000. Total site costs t. date are approximately $320,000. This case is significant in that EPA was alleging liability based on the fact that the defendants' hazardous wastes (PCBs) were stored at the PPM facility for a period of time. The defendants settled despite the fact that they had produced a manifest signed by the receiving facility (Rose Chemical) proving that the PCB wastes were eventually removed from the PPM site and disposed of, and despite the fact that the they had entered into a previous settlement with EPA for disposal of the very same shipment at the Rose Chemical site.

U.S. v. Smuggler-Durant Mining Corporation et al., (D. Colo.) Smuggler Mountain Superfund Site, Colorado: Four consent decrees were lodged in the District Court for the District of Colorado in March and April of 1992 for the Smuggler Mountain Superfund Site. These decrees were filed pursuant to a cost recovery suit filed October 16, 1989, seeking $1,851,116 in past costs and interest pursuant to §107 of CERCLA. Ten defendants were named in the judicial complaint. The Smuggler Mountain Site covers approximately 110 acres of land in the City of Aspen, Pitkin County, Colorado. Mining activities, including milling and processing operations were begun in the late 1800's, and it is estimated that heavy metal-laden wastes were discarded and/or concentrated on the Site from the 1880's to 1960's. Lead and cadmium contamination are of most concern, since the high levels of these substances in the tailings and soils throughout the Site could pose toxic and carcinogenic health risks to the over 1,100 residents living there.

Under one decree, entered into with the Atlantic Richfield Company (ARCO) and the U.S. Department of Interior (DOI), EPA will recover $3,252,000 in past and future costs. Three other groups of PRPs are involved in this Site: Centennial PRPs, the Hunter Creek Management PRPs, and the Smuggler Ltd. group. A settlement with the Centennial PRPs, owner, financier, and developer of portions of the Site, requires them to perform the remedy, operation and maintenance on the Centennial property, and pay $33,000 in cash. The value of the cleanup to be performed by the Centennial PRPs has been estimated at $63,000.

The two other consent decrees for this Site involved "ability to pay" parties -- Smuggler Limited, developer of the Smuggler Run Trailer Park, and Hunter Creek Management, Inc., operator of maintenance at the Hunter Creek Condominiums. The decrees involving the Centennial and ability to pay PRPs were entered by the court on September 28, 1992.

U.S. v. I.B. Stringfellow, Jr., et al., (C.D. Cal.) Stringfellow Superfund Site, Riverside County, California: EPA substantially advanced the long-standing litigation over the Stringfellow Acid Pits Superfund Site in FY 1992 with the conclusion of a series of settlement agreements providing for significant remedial work at the Stringfellow Site and nearly full cost recovery. The settlement package, valued at approximately $132 million, is embodied in three settlement documents, two consent decrees and one administrative order on consent.

On July 30, 1992, a consent decree was lodged with the District Court for the Central District of California on July 30, 1992. This consent decree, referred under CERCLA §§106 and 107 and RCRA §7003, requires defendants to conduct remedial design and remedial action specified in the fourth Stringfellow ROD and reimburse the United States for certain costs. Response work under this settlement is valued at $36 million. Past costs recovery will total in excess of $80 million, and future costs are estimated at approximately $8-16

million over the next eight years. Therefore, this settlement has a total value of approximately $132 million. The decree was entered by the court on October 24, 1992.

U.S. Scrap Site, Chicago, Illinois: On January 24, 1992, Region V issued a letter to 84 settling respondents stating that the CERCLA 122(h) Administrative Agreement for the U.S. Scrap Site had been signed by EPA and issued for public comment. The letter further stated that since no public comment had been received, the Agreement was effective and $566,332 must be deposited in the Superfund within thirty (30) days of the date of the Agency's letter. In 1985, EPA performed an emergency removal action at the U.S. Scrap Site in Chicago, Illinois. Work performed included extinguishing a landfill fire, fencing the site, and excavating contaminated soil, debris, crushed drums, and drums of hazardous wastes. In addition, EPA conducted a Special Study/Expanded Site Inspection which recommended that the Site be evaluated under the new HRS scoring package. This recommendation is currently being implemented. The $566,332 due under the Agreement, along with a prior bankruptcy settlement and payments due under a consent decree lodged on January 3, 1992, represent a recovery of more than 93% of past costs.

U.S. v. J.M. Taylor, et al., (M.D.N.C.) Aberdeen Pesticides Dump NPL Site, Aberdeen, North Carolina: On August 31, 1992, a consent decree for RD/RA with defendant Ciba-Geigy was lodged in the District Court for the Middle District of North Carolina in this case. Pursuant to the decree, Ciba-Geigy has agreed to perform a soil/source and groundwater remediation, and pay $695,000 in past costs for the site. The wastes at the Site consist of pesticide-related contaminants, residues of technical grade materials, and containers. This decree settles liability for two of five areas in the Site.

U.S. v. Waste Management of Wisconsin, et al., (E.D. Wi.) Hunt's Disposal Landfill Superfund Site, Caledonia, Wisconsin: On July 20, 1992, a consent decree was entered by the District Court for the Eastern District of Wisconsin approving the agreement between the United States and 39 PRPs to implement the September 1990 ROD and perform the RD/RA for the Hunt's Disposal Landfill Site in Caledonia, Wisconsin. Pursuant to the terms of the decree, the settling defendants will pay 100% of the United States' past costs and interest ($1.5 million); conduct extensive pre-design and design phase investigations and studies; and design, construct, and operate the remedy. The total cost of the RD/RA is estimated to be $21 million.

The source containment remedy required by the ROD calls for the encapsulation of the waste mass (and numerous hazardous substances contained therein) within the landfill through capping, installation of a full perimeter slurry wall tied into the cap and underlying clay layer, and performance of groundwater extraction/treatment for purposes of gradient control. The decree requires extensive pre-design investigations to be performed in order to confirm the continuity of the clay layer, determine the need for an active landfill gas extraction system, evaluate impacts on surrounding wetlands, and evaluate potential off-site groundwater contamination. The remedy should result in the prevention of contaminant migration to surrounding receptors and media, which include nearby residences, a recreational river, and several valuable wetlands and forests.

U.S. v. Westinghouse Electric Corp. and Fell Iron & Metal, Inc., (S.D. Ind.) Fell Iron & Metal Scrapyard Superfund Site, Bloomington, Indiana: On March 28, 1992, the District Court for the Southern District of Indiana entered a consent decree in this case, thereby resolving the United States' claims against Westinghouse and Fell Iron & Metal, Inc. This is the first CERCLA § 107 cost recovery consent decree providing for payment of past and all future response costs where the United States EPA has not completed selection of the remedy. The decree provides for the payment by Westinghouse of $887,598.90, representing 95% of the United States' past costs, and payment of 100% of all future response costs. Westinghouse and Fell agreed to these terms despite the fact that EPA has not yet selected a remedy for disposing of the PCB-contaminated soil and materials staged at the site. The Fell Iron & Metal Scrapyard Site, located in downtown Bloomington, Indiana, is the subject of an ongoing, non-time critical removal action. EPA's action at the site began in 1984, with the commencement of emergency removal activities. As further contamination was discovered, EPA's removal action continued with non-time critical removal

activities, including the excavation of approximately 15,000 cubic yards of PCB contaminated soils and materials from the site. These soils and materials are now stored at the site. The ultimate method of disposing of the excavated soils and materials is the subject of an Engineering Evaluation/Cost Analysis (EE/CA), but no disposal decision has been made by EPA. EPA's action against Westinghouse and Fell commenced in 1988 and sought recovery of all past costs and a declaratory judgment for all future costs. On January 25, 1991, the District Court granted EPA's motion for summary judgment on liability. In settlement, Westinghouse agreed to pay $887,598.90 for past costs and to pay 100% of all future response costs. Future response costs, as identified in the EE/CA, range between three and ten million dollars depending on the disposal technology ultimately implemented.

Whitmoyer Laboratories, Inc., Superfund Site, Jackson Township, Lebanon County, Pennsylvania: On September 6, 1992, two settlements for total of $127.15 million were lodged in the District Court for the Middle District of Pennsylvania, representing an approximate 98.3% recovery of the estimated value of the United States' claims at the Whitmoyer Site. The Whitmoyer Superfund Site is a 22 acre tract of land located in Jackson Township, Lebanon County, Pennsylvania owned by Whitmoyer Laboratories, Inc. An estimated 3.75-4 million pounds of arsenic were placed in a waste storage vault at the Site. In 1984, EPA detected elevated levels of arsenic in the downgradient surface water and sediment, and elevated levels of organics were also found in on-site monitoring wells.

The first proposed consent decree between the United States, Rohm and Haas Co. and SmithKline Beecham Corp. requires the implementation of remedial design and remedial action (RD/RA) in accordance with Records of Decision for Operable Units 2 and 3 and reimbursement of $250,000.00 in past response costs. The selected remedy, which involves the cleanup of extensive arsenic contamination of soils, sediments and groundwater and the disposal of arsenic contained in a "vault" located onsite, is estimated to cost approximately $125 million. The second proposed consent decree, between the United States and the Estate of Clarence W. Whitmoyer, Sr., requires the Estate to pay the EPA $2.9 million in past response costs, plus fifty percent of any amount remaining in the residual estate trust after the accounting. Rohm and Haas bought Whitmoyer Laboratories, founded in 1934 to manufacture veterinary pharmaceuticals, in 1964 and operated it until 1978 when it was sold to Beecham (now SmithKline Beecham). SmithKline Beecham operated the facility until 1982.

U.S. v. Wildwood Conservation Corp., et al., (D. Ma.) Wells G & H Superfund Site, Woburn, Massachusetts: On October 9, 1991, the United States District Court for the District of Massachusetts entered a consent decree addressing four of the five source areas of contamination at the Wells G & H Site. The decree requires defendants to conduct remedial design and remedial action for a first operable unit, reimburse the United States for certain past costs, and reimburse 100 percent of the United States' future oversight costs. In addition, a smaller set of the settling parties agreed to perform a RI/FS for the second operable unit, which covers the cleanup of the central area of the Site. This settlement provides for recovery of approximately 82 percent of the Governments' past and estimated future costs, and is worth approximately $69.45 million.

U.S. v. Xtron Corp., (C.D. Utah) Xtron Corporation Superfund Site, Blanding: After almost a year of negotiations, EPA successfully achieved a settlement for 100% of response costs incurred for the Xtron Removal action, totaling $329,130.00. Full payment was made in this regard on February 24, 1992. Signatories to the Decree include FMC Corporation, Monsanto Company, Hewlett Packard Company, National Semiconductor Corporation, Texas Instruments, Kaiser Aluminum & Chemical Corporation, Crystal Specialties, Inc., and General Instrument Corporation. This settlement with FMC et al. provided for payment of 100 percent of EPA's past costs for oversight and other costs incurred related to investigative activities at the the site and implementation by several PRPs of a UAO issued by Region VIII on July 12, 1988. No additional work on the Site is anticipated. Subsequent to the entry of the consent decree by the court, an additional $5,000.00 (which will be credited as interest) was committed to by the U.S. Bankruptcy Trustee for one of the PRPs in this case, Gordon S. Bird, case No. 87A-03190. Distribution in this matter should take place

within the next six months. This case exemplifies how effective EPA can be in cost recovery when negotiations are well focused and given sufficient time to mature.

State Superfund Settlements

State of Arizona v. Nucor Corp., (D. Ariz.) West Osborn Complex, Phoenix, Arizona: On September 15, 1992, the District Court for Arizona approved a $1.275 million settlement between Nucor Corp. and the Arizona Department of Environmental Quality (ADEQ). ADEQ had brought an action against Nucor under CERCLA in an effort to clean up groundwater in West Central Phoenix. To date, three plumes of groundwater in that area have been identified as contaminated with the industrial chemicals trichloroethylene (TCE), 1,1-dichloroethylene (DCE), and tetrachloroethylene (also known as perchloroethylene, or PCE). Nucor operated as an electronic components manufacturing firm at a facility known as the West Osborn Complex.

De Minimis Settlements

If a PRPs involvement with a site is de minimis, EPA will be receptive to reaching a final settlement with such parties early in the process. Use of the de minimis settlement tool has been an priority of EPA's CERCLA enforcement program during FY 1992. As the cases that follow demonstrate, de minimis settlements may be appropriate when the amount and the toxic or hazardous effects of the substances a de minimis PRP contributed to a site are minimal in comparison to the contamination at the site. De minimis settlements may be reached administratively, or through a consent decree.

U.S. v. Aaron Scrap Metals, Inc., et al. (N.D. Fla.) Aaron Scrap Metals Superfund Site, Jackson County, Florida: A settlement involving approximately 50 PRPs, was lodged in District Court for the Northern District of Florida on October 30, 1992. This settlement will result in the implementation of the source control remedial action and the repayment to EPA of $1,000,000 in past Agency costs. Over 200 companies that were designated as PRPs were sent special notice letters in May 1991 and negotiated for approximately a year before reaching a settlement. Over half of the PRPs that settled were de minimis parties. The de minimis provision allows these PRPs to cashout based upon their volumetric contribution of batteries to the Site, the estimated cost of the cleanup, and a premium. EPA is now in the process of offering de minimis settlements to qualifying PRPs who did not sign the consent decree. These settlements are identical to the original de minimis settlements in the consent decree with the addition of a "Late Settlor Premium." Funds gathered with this premium will be applied to EPA's past costs. The non de minimis PRPs will be responsible for performing the source control remedial action and, unlike the settling de minimis parties, will remain liable for the groundwater and the Steele City Bay remedies. Also, EPA is still in the process of identifying additional PRPs.

The Site, located in Jackson County, Florida, includes approximately 30 acres of land contaminated by heavy metals. The contamination resulted from the activities of a battery recycling plant that was formerly located on the Site. EPA had spent extensive funds investigating the Site prior to discovering that there were viable PRPs. Only the source control remedy is covered by this settlement; the groundwater remedy and the Steele City Bay (an offsite wetlands) remedy will be covered in future settlements.

Alaskan Battery Site, Fairbanks, Alaska: On July 14, 1992, EPA signed Region 10's first AOC for a de minimis settlement. Previously, all such settlements were in the form of consent decrees and were products of cleanup negotiations. However, at this site it was decided that de minimis parties should have a chance to settle with the government prior to selection of the remedy. The 27 parties include both local small businesses and large corporations, all of whom sent batteries to the Site when a recycling company was operating there. EPA did a removal action at the Alaskan Battery Site in 1988-89, and the money recovered ($179,447) will be applied to removal and RI/FS costs. EPA is continuing negotiations with the major parties at this site for the balance of the costs; future cleanup actions are yet to be determined.

H. Brown Co. Superfund Site, Walker, Michigan: This case is one of the first "early" de minimis settlement cases under a new policy adopted by the EPA in June of 1992. EPA sent general notice

letters to approximately 1200 parties with an invitation to participate in a de minimis settlement at the H. Brown Superfund Site in Walker, Michigan. The settlement proposal was sent to the parties over two months prior to remedy selection for the Site, which was a battery breaking facility from the early 1960s until the early 1980s, containing soil heavily contaminated with lead.

Over 150 small businesses and individuals accepted the de minimis offer, amounting to $650,000 in costs to be collected by the Agency. Included in the group of settling parties are 10 individuals and two corporations who were allowed to participate in the settlement for an amount less than their allocated share based on their demonstrated inability to pay. All signatories will receive a full covenant not to sue and complete contribution protection upon the payment of their settlement amount. The Region later sent special notice letters to over 100 major PRPs to request their performance of the remedy.

California Gulch Superfund Site, Leadville, Colorado: The United States filed CERCLA §§106 and 107 actions against thirteen parties on August 6, 1986 in the Consolidated District Court for the District of Colorado, resulting in two consent decrees for the Site. The California Gulch Superfund Site is located in and near Leadville, Colorado, a mining town approximately 100 miles southwest of Denver. California Gulch, a small stream south of Leadville, flows 7.25 miles from its origin to its confluence with the Arkansas River. The site which is approximately 11.5 square miles, encompasses the California Gulch drainage basin and several drainage basins that are tributaries to the Gulch. The key subsurface feature at the Site is the Yak Tunnel, which drains water from numerous mines. The tunnel discharge contains high levels of metals, including cadmium, copper, lead, and zinc. These levels exceed the ambient water quality criteria for toxicity to freshwater aquatic life. Three types of mine waste are also present (i.e., waste rock, tailings and slag) are their concentrations of heavy metals pose a significant to human health and the environment. This case involves challenges to EPA's assessment of the risk from lead and other metals at Superfund mining sites. The enforcement actions taken reinforce the strategic implementation of statutory mandates; in particular the Agency's lead strategy.

The consent decree with Robert L. Elder, owner of certain mining claims, was based on the fact that he obtained his mining claims through inheritance and is thus a "de minimis landowner." The Elder decree therefore provides for access and deed restrictions without any recovery of response costs. The Elder decree was entered on June 26, 1992.

The consent decree with the Hecla Mining Company, operator of the Malta Gulch Tailings Ponds, provides for recovery of $450,000 of "site-wide" response costs and performance of an EE/CA and ultimately a response action on the Malta Gulch Tailings portion of the Site. The Hecla consent decree was lodged in April of 1992.

City Industries Site, Winter Park, Florida: On December 10, 1991, the District Court for the Middle District of Florida entered a consent decree in connection with the City Industries site in Winter Park, Florida. The decree obligates 146 settling defendants (including 120 de minimis defendants) to finance the EPA-conducted remedial action (estimated to cost approximately $4 million), to reimburse EPA for all future response costs (including the cleanup's operation and maintenance costs), and to reimburse EPA for all past costs incurred since a previous decree.

EPA also took several actions against the recalcitrant PRPs who formerly operated this site (Arthur Greer; City Industries, Inc.). For example, in November, 1991, the court granted the government's motion for partial summary judgment on liability against these parties. On February 6, 1992, the United States filed a motion to compel Greer to respond to the government's interrogatories. In addition, on June 29, 1992, the U.S. filed its motion for summary judgment against these two defendants. These actions demonstrate the government's commitment to pursue recalcitrant parties for costs not recovered in previous settlements.

Hastings Groundwater Site, Colorado Avenue Subsite de minimis Settlement, Nebraska: This innocent landowners de minimis settlement, which was finalized in June, 1992, requires the landowners to clear their property and provide access to EPA and any party taking response action pursuant to an order with EPA. Before the comment period closed on the proposed settlement, the major PRPs filed a contribution

action against the proposed de minimis settlors. Simultaneously, the major PRPs filed comments objecting to the settlement. The Region provided all commentors an opportunity to state their position at a meeting as well as submit further comments. The Region finalized the order on June 10, 1992, after the second comment period closed. On September 9, 1992, the Federal District Court of Nebraska granted the defendants' motion for summary judgment on the basis that the de minimis settlement barred contribution actions. The court also stated that it did not reach the issue of whether it had jurisdiction to review EPA's decision to settle. The ruling is significant because it is the only reported decision upholding the contribution protection granted in an EPA administrative settlement.

U.S. v. Iacavazzi, et al. (M.D. Pa.) Lackawanna Refuse Site, Old Forge, Pennsylvania : A de minimis settlement resolving the liability of fourteen de minimis parties at the Lackawanna Refuse Site to the United States and the State of Pennsylvania, and a consent decree resolving the liability of the major generators and the civil liability of Chemical Waste Management, Inc. were entered in this case. These settlements were filed in conjunction with a criminal plea agreement for a total recovery of $27,031,396, of which $24,172,086 will go to the United States and $2,859,310 will go to the State.

Pits at the site were used for the disposal of municipal and commercial wastes, including drums of solvents and sludge wastes. Leachate containing a wide variety of hazardous substances was released from the pits into the surrounding environment. The selected remedy called for the removal of all drums and highly contaminated soils, capping, installation of a surface water drainage diversion, construction of a leachate collection and treatment system,and removal of contaminated soil from the borehole pit, the access road, and the paint spill area. The remedial construction at the Site is virtually complete.

U.S. v. I. Jones Recycling Clinton Street Superfund Site, Fort Wayne, Indiana: On January 18, 1992, the Regional Administrator for Region V signed three administrative cost recovery settlements which resolved the liability of 43 PRPs at the I. Jones Recycling, Clinton Street Superfund Site in Fort Wayne, Indiana. These settlements require the PRPs to pay a total of $1,212,531 into the Superfund. Of that sum, $654,795 reimburses EPA for response costs; $530,511 represents settlement of the potential liability of some PRPs for penalties under §106(b) of CERCLA; and $27,223 represents settlement of the potential liability of some PRPs for statutory interest. Through these settlement orders, and a previous de minimis settlement, EPA has resolved the liability of all 187 viable generators at the Site. EPA had begun removal activities at this abandoned recycling facility in October 1986. After the site owners refused to comply with unilateral cleanup orders, EPA conducted a phased removal at the site. From October 1986 through November 1988, the Agency stabilized and secured the site and characterized and disposed of over 400,000 gallons of waste at a cost of approximately $3 million. Pursuant to a July 27, 1988, unilateral order, a group of generators completed the final phase of the removal, including the cleanup of tank sludges, contaminated soils and site buildings, at a cost of more than $5 million. EPA's oversight of these activities cost an additional $200,000.

In March, 1989, EPA offered a de minimis settlement to all generators who contributed less than .45% of the total waste at the site. Under that settlement, 144 generators paid a total of $2,056,091 to reimburse EPA's response costs. As with the present settlements, those de minimis settlers who had not complied with the unilateral order paid additional amounts (totaling $331,762) to resolve their potential liability for noncompliance with that order. The Agency is currently pursuing a cost recovery action against the owner/operators of the site to recover the remaining $500,000 in response costs, plus penalties and treble damages.

Kassouf-Kimerling Site, Tampa, Florida: Region IV finalized its first landowner de minimis settlement in late April 1992. EPA and the de minimis landowners signed an AOC pursuant to §122(g) (1) of CERCLA, under which the de minimis parties agreed to reimburse EPA the sum of $250,000 to cover a portion of EPA's past costs.

The Kassouf-Kimerling Site was used by the Gulf Coast Lead Company to dump battery casings. The Site is located in marshy area adjacent to wetlands. Both the Site and the wetlands have become contaminated with lead. Gulf Coast Lead

signed a consent decree with EPA in which it agreed to perform EPA's selected remedy and also to reimburse EPA for $130,000 of its past costs (past costs totalled $380,00). Several of the landowners requested that they be allowed to enter into a de minimis landowner settlement with EPA. After consideration of their petition and all the facts, EPA determined that they were eligible for such a settlement.

Lowry Landfill Superfund Site: One hundred and forty-three of the 260 PRPs at the Lowry Landfill site met EPA's eligibility criteria for a de minimis settlement. Of the 143, thirty-three expressed an interest in settling with EPA (over 100 eligible parties entered into a private indemnification agreement with Waste Management, Inc., the operator of the landfill). Of the thirty-three eligible PRPs indicating interest in settling their liability with EPA, sixteen Non-Federal PRPs and six Federal PRPs elected to accept the terms of an AOC. The settlement agreement offers the PRPs the choice of selecting one of two premium options. Taking into account the various premium options selected, the cumulative monetary contribution for the de minimis settlement amounts to $633,789.78. Both EPA Headquarters and DOJ concurred on the settlement. The AOC was announced in the Federal Register on November 18, 1992, requesting public comment on the settlement.

The MEW site is extensively contaminated with PCBs as a result of transformer repair and remanufacturing business operated by Missoure Electric Works since 1954. The soil is contaminated with up to 53,000 ppm PCB. PCB have also been detected in ground water by this contamination has not yet been fully characterized. The ROD calls for incineration of the contaminated soils.

U.S. v. Midwest Solvent Recovery, Inc. et al., (N.D. Ind.) Midco Superfund Site, Gary, Indiana: On July 23, 1992, a settlement for RD/RA was entered in the District Court for the Northern District of Indiana for the Midco I and II Superfund Sites located in Gary, Indiana. In 1979, these sites were covered with burned out drums, full and partially filled drums, contaminated soil, and various tanks, some of which contained liquids. Removal actions were subsequently conducted to clean up the drums, tanks, and contaminated rubble, and in 1989 records of decision (RODs) were issued for groundwater cleanup, some soil treatment, and a RCRA cap. After unsuccessful negotiations with the PRPs, EPA issued unilateral orders and filed an amended CERCLA §§ 106 and 107 complaint to renew the litigation. The 93 settling PRPs and third party defendants have agreed to pay approximately $5 million in past costs. In addition, they will undertake corrective action which includes on-site treatment of contaminated soil by soil vapor extraction and by solidification/stabilization, excavation and treatment of contaminated sediments, pumping and treatment of ground water and probable deep well injection, and the construction of a RCRA subtitle C cap.

Nine corporate generators agreed to perform removal and treatment, and pay a penalty of $400,000. A number of landowner defendants were included in the settlement for access and deed restrictions. Concurrently, a de minimis landowner settlement with Penn Central Rail Road was entered, as was a separate settlement with DeSoto, Inc., who failed to sign the RD/RA decree at the last minute, but settled under slightly more onerous terms approximately one month later. The Site is one of two NPL Sites located in Gary, Indiana, where former solvent recycling operations took place in the 1970's.

U.S. v. Ross Electric, et.al., (D. Wash.) Ross Electric/Coal Creek Superfund Site, Chehalis, Washington: On February 3, 1992, two consent decrees were entered in the District Court for the Western District of Washington for the Ross Electric/Coal Creek Superfund Site. The 8-acre site was contaminated with PCBs and other organic compounds and metals as a result of the handling and/or disposal of scrap electrical equipment, ash and oils.

Under the first decree, eight major settling defendants agreed to reimburse the U.S. for its response costs, totaling over $12 million. The major settlors will also implement the remedy, which includes on-site incineration and containment of contaminated soils and long-term groundwater monitoring. The second, de minimis consent decree provides that seventeen de minimis settlors, including three federal agencies, shall pay for the performance and monitoring of the response action.

U.S. v. Sheridan Disposal Service et al. (S.D. Tex.) Sheridan Disposal Services Site, Hempstead, Texas: A settlement with 16 PRPs resulted in a agreement representing a total settlement of approximately $30 million dollars. One consent decree provides for the private party performance and financing of the RD/RA of the Source Control Operable Unit, estimated to cost $28 million; reimbursement of $430,000 in past costs; and implementation of a mitigation plan for loss of natural resources. A second consent decree provides for the private party performance and financing of the groundwater migration management plan estimated to cost $326,000; reimbursement of $50,000 in past costs; and a lump sum payment of $32,000 for future oversight costs. The third consent decree is a cost recovery consent decree for $32,160 from five de minimis settlors who previously had participated in the ground water migration management settlement and consent decree, but not the Source Control settlement. The consent decrees were lodged in the District Court in the Southern District of Texas on December 3, 1991.

The Sheridan Disposal Services site is located approximately nine miles northwest of the city in Waller County, Texas. Sheridan Disposal Services operated a commercial waste disposal facility of the site from about 1958-1984, using a small incinerator and a fifteen-acre lagoon.

Tonolli Corporation Superfund Site, Nesquehoning, Pennsylvania: EPA issued an AOC pursuant to §122(g)(4) of CERCLA to resolve the liabilities under CERCLA of 170 de minimis parties for response costs incurred at the Tonolli Corporation Superfund Site.

A party was eligible to participate in the settlement if the volumetric contribution of hazardous substances to the Site was less than 1% of the total volume of hazardous substances and if toxic or other hazardous effects of the hazardous substances contributed by the PRP was minimal in comparison to the cumulative toxic or other hazardous effects of the hazardous substances sent to the Site.

EPA has identified 532 PRPs at the Site; 432 are de minimis parties: of these, 170 have signed the Consent Order. Because this settlement was proposed prior to the issuance of a ROD, EPA estimated the future costs of the remedy by reviewing RODs for 13 Superfund Sites which involved similar wastes and disposal practices. The 170 settling de minimis have agreed to pay $3,491,233. Of this amount, $2,471,701 would reimburse EPA for past response costs incurred at the Tonolli Corporation Superfund Site and the balance will be used to finance future work at the Site.

U.S. v. Union Electric Co., (E.D. Mo.) Missouri Electric Works, Cape Girardeau, Missouri: On June 29, 1992, a RD/RA consent decree for the Missouri Electric Works Site (MEW). The settlement used both mixed-funding and de minimis settlement authorities to ensure an equitable settlement. The consent decree, valued at $15,373,430, provides a cashout for certain federal agencies and de minimis parties. The consent decree was signed by 167 defendants, 39 of which were non-de minimis.

Due to the large number of orphan shares, mixed funding was appropriate for the settlement. Accordingly, EPA committed to reimburse the PRPs for up to $3.5 million in response costs. The de minimis provision, signed by nearly 100 parties, gives PRPs a menu of settlement plans to choose from, varying the payment and covenant not to sue provisions for under certain circumstances.

CERCLA Administrative Enforcement

EPA has brought a number of administrative actions under CERCLA against PRPs in fiscal year 1992. As an alternative to litigation, CERCLA grants EPA the authority to issue administrative orders, called Unilateral Administrative Orders (UAO), or to reach administrative agreements, called Administrative Orders on Consent (AOC). The use of EPA's administrative authority at Superfund sites has dramatically sped up cleanup activities, and effectively avoided many of the expenses associated with litigation. Following are a few representative cases.

Anaconda Aluminum Co./Milgo Electronics Corp. Superfund Site, Miami, Florida: In February 1992, EPA Region IV and the Atlantic Richfield Company entered into an AOC for ARCO to perform a removal action for a portion of the Anaconda Aluminum Co./ Milgo Electronics Corp., Site in Miami, Florida. The Site consists of two

distinct parcels of property located across the street from one another in Miami, Florida. This order involves only the portion of the property which was formerly owned by the Anaconda Aluminum Company. ARCO, or its predecessors in interest, operated an aluminum anodizing facility on the Anaconda property from approximately 1962 to 1982. Operations at the Site generated contaminated waste water which was discharged into a percolation pit on the property. The AOC deals with the contaminated soil from a former percolation pit at the Site. The removal is intended to eliminate the source of further contamination to groundwater at the Site. In the order, ARCO has agreed to pay all of EPA's oversight costs in connection with the removal action.

Arctic Surplus Superfund Site, Fairbanks, Alaska: On July 24, 1992, the U.S. Defense Logistics Agency (DLA) signed an AOC with EPA under which it agreed to conduct a RI/FS for the Arctic Surplus site. DLA is the parent agency of the Defense Reutilization and Marketing service, which arranged for transport of contaminated materials to the site, where they were salvaged. DLA also conducted a removal action at Arctic Surplus in 1990 and financed a further removal in 1991. This is one of the few sites in the country where a federal PRP has agreed to conduct response actions at a privately-owned site.

U.S. v. Asarco Incorporated (D. KS.): EPA obtained the highest penalty to date for failure to comply with CERCLA §104(e) request for information. A $453,750 fine was paid by Asarco, Incorporated for not complying with a 1990 EPA information request under CERCLA §104(e)(2) regarding the company's involvement in the Kansas City Structural Steel site in Kansas City, Kansas. In addition to paying the penalty, Asarco is obligated to provide a full, certified response to EPA's information request.

The 27-acre Kansas City Structural Steel site was operated as a lead and silver smelter from 1880 to 1901 by Consolidated Kansas City Smelting and Refining Company (Consolidated). In 1899, during the smelter's operation, Consolidated was one of several smelters that joined to form Asarco Incorporated. Asarco thereafter directed the smelter's daily operations, although the property comprising the site actually continued to be held in the name of Consolidated.

In responding to the original information request, Asarco responded that it had never had an interest, whether direct or indirect, in the site and that it "has no documents dating from the turn of the century that relate to hazardous substances at the site." In mid-1991, EPA was informed by a third party litigant of the existence of documents establishing Asarco's liability at the site and subsequently obtained said documents. The information was used to form the basis for the issuance of a Unilateral Administrative Order to the company to perform a removal action at the site.

Buckeye Reclamation Site, St. Clairsville, Ohio: This AOC, concerning the Buckeye Reclamation Site in St. Clairsville, Ohio, is one of the first entered into for Remedial Design. The advantage of this approach is that the remedial design can start immediately upon signature by the Agency without awaiting the long entry process for a consent decree. The past cost issues will be decided during negotiations for a remedial action consent decree.

The Buckeye Site was operated as a landfill for solid waste and at certain times for hazardous waste. A RI/FS was conducted at the site and a ROD requiring a cap, leachate controls and treatment, and long-term monitoring of the ground water was issued in 1991. After a 90-day negotiating period it was agreed that a group of the PRPs would conduct a remedial design. The anticipated cost for the remedial action is approximately $40 million.

Bunker Hill Superfund Site, Northern Idaho: On July 29, 1992, EPA executed a CERCLA §106 AOC in which seven of the Bunker Hill PRPs have agreed to perform the fourth consecutive residential soil removal action at the Bunker Hill Superfund Site in northern Idaho. The work will be performed at properties where lead contamination exceeds 1000 ppm and the property is occupied by one or more children 0-12 years old or pregnant women. The order also requires the PRPs to remove and relocate contaminated soil temporarily stored from previous removal actions, undertake dust control activities, perform monitoring activities, and provide up to $20,000 to fund the Panhandle Health District's lead intervention program. The respondents must also perform repair work at the properties cleaned up under the 1991 Residential Soil AOC, and

provide disposal and transportation services (and replacement soil) for contaminated soil excavated from residential and commercial properties with the Site.

The same PRPs agreed to perform similar work in 1991 and funded EPA's performance of residential soil cleanup work in 1990. EPA also conducted its own residential soil removal action in 1989.

BMI-Textron Superfund Site, Lake Park, Florida: On June 30, 1992, Textron, Inc., signed an AOC for a RI/FS at the BMI-Textron Superfund Site. The Site was included in the National Priorities List on August 30, 1990. The approximately 3.4 acre Site is located in an industrial park in Lake Park, Florida. From 1969-1980 the Site was owned by Basic Microelectronics, Incorporated (BMI), which manufactured chrome-backed glass plates used in the production of electronic components at the Site. Process waste was disposed on site through a combination of settling basins and percolation ponds. In December 1980, BMI was sold to Textron and continued operations under the name of BMI-Textron until December 1985. Pursuant to two consent agreements with the Florida Department of Environmental Regulation in 1984 and 1988, BMI-Textron removed contaminated soils from two percolation ponds and capped a third percolation pond. In addition, a groundwater monitoring plan was implemented. Analytical results of the groundwater on-site showed elevated concentrations of chromium, aluminum, iron, cyanide, manganese, and acetone.

Chemsol Superfund Site, Piscataway Township, New Jersey: A UAO was issued by Region II in March requiring four PRPs to carry out RD/RA at this NPL site, located in a highly developed residential and commercial area in Piscataway Township, New Jersey. The site was used as a solvent recovery and waste reprocessing facility in the 1950s through the mid-1960s. Groundwater in the area contained high levels of volatile organic compounds emanating from the site; the contaminant plume extended down to a depth of approximately 130 feet near the site. Residential wells nearby had also been contaminated with VOCs. The remedy includes extraction and treatment of the contaminated groundwater, and is estimated to cost about $7.7 million.

Crystal Chemical Superfund Site, Houston, Texas: On September 3, 1992 EPA Region VI issued a UAO to Southern Pacific Transportation Company seeking performance of the remedy after failing to reach an agreement during RD/RA consent decree negotiations. The Region recently completed a second ROD to select a new remedy for the site after the national vender for in situ vitrification withdrew its technology from the marketplace last summer. The new remedy calls for capping the contaminated soil and groundwater extraction and treatment. The Region estimates the cost of the remedy to be approximately $14 million.

Commencement Bay/Nearshores Superfund Site, Tacoma, Washington: On October 23, 1991, Region X issued a UAO to the Port of Tacoma to expedite removal of contaminated material from a property along the Hylebos Waterway, a part of the Commencement Bay/Nearshores Superfund Site. The contaminated material was excavated and disposed of offsite. The Port of Tacoma, which planned and implemented the response in full compliance with the order, is cleaning the property before it is transferred to the Puyallup Indian Tribe as part of the 1988 land claims settlement. EPA and the Port of Tacoma also reached a settlement agreement on July 7, 1992, pursuant to §§104 and 106 of CERCLA, on actions to be taken by the Port of Tacoma at four properties to be transferred to the Puyallup Indian Tribe under the 1988 land claims settlement.

Denver Radium Site, Denver, Colorado: On August 31, 1992, EPA issued a UAO to the S.W. Shattuck Chemical Company, Inc. (Shattuck) pursuant to CERCLA §106(a) to perform remedial work at the eighth operable unit (OU-8) at the Denver Radium Superfund Site in southwest Denver, Colorado. Shattuck was directed to perform the remedial design/remedial action for radioactive soils, buildings and groundwater in OU-8, estimated to cost $26,600,000. The Shattuck property was the location of several mineral processing operations from the early 1900s to 1985, including the processing of tungsten ores, radium slimes and molybdenum ore. As a result, the site's soil, groundwater, air, and buildings are variously contaminated with radium, thorium, uranium, arsenic and other organic compounds. EPA listed the entire Denver Radium site on the NPL in September 1983, and has divided the site into eleven operable units for response. By issuing the UAO, Region VIII is

continuing to emphasize PRP cleanups as appropriate, as well as conserving a considerable portion of the Trust Fund.

Dorney Road Landfill Superfund Site, Allentown, Pennsylvania: On August 13, 1992, EPA Region III issued two CERCLA § 106 UAOs for the RD/RA to be conducted on Operable Units 1 and 2 of the Dorney Road Landfill Superfund Site in Allentown, Pennsylvania. The first UAO added 4 PRPs to the list of those participating in Operable Unit 1's construction of a cap for the landfill. The order mirrored an earlier UAO requiring 7 other PRPs to build the cap, and used language such as "coordinate and cooperate" in order to hold the 4 additional parties to the same standard set in the first UAO despite whether parts of the work required by the order had already been completed. The work to be performed by the PRPs has a present worth value of approximately $14 million dollars. A second UAO was signed on the same day, addressed Operable Unit 2's groundwater remedy. The work to be performed under the second order has a present worth value of approximately $500,000.

First Piedmont Rock Quarry (Route 719) Site, Danville, Pittsylvania County, Virginia: EPA Region III sought installation of a $2.2 million RCRA Subtitle C landfill cap, and cost recovery of $140,000 in past and future costs under §§106, 107, and 113 of CERCLA. After settlement negotiations with the PRPs, Corning, Inc., First Piedmont Corporation, and The Goodyear Tire & Rubber Co., did not succeed, a UAO for the RD/RA was issued July 23, 1992. On the deadline for response to the UAO, August 24, 1992, the PRP Group notified Region III that they would perform the RD/RA.

In the Matter of Hadley Street Drum Site, St. Louis, Missouri: The Hadley Street Drum site is located in downtown St. Louis, Missouri. The site is a former fabric coating facility operated by Neese Coated Fabrics, Inc. The site comprises two attached buildings. One building owned by Neese Coated Fabrics, Inc. was the site of a fund lead removal action in July and August of 1992, after the owner/operator failed to respond to a unilateral order on July 24, 1992. The other portion of the site is owned by the Hadley Street Real Estate Company, Inc. A Unilateral Administrative Order was issued on July 24, 1992, requiring the owner to conduct removal response activities at the portion of the site owned by the company. Respondent Hadley Street RealEstate Company, Inc. agreed to undertake the removal response activity required by the Unilateral Administrative Order. The removal activities required by the Order include removal of approximately 800 drums, some containing ignitable waste, and pumping of several underground storage tanks containing hazardous substances.

Harris Corporation Superfund Site, Brevard, Florida: On January 23, 1992, the Harris Corporation executed an AOC for the RI/FS for Operable Unit 2 at the Harris Superfund Site. The AOC also requires the Harris Corporation to reimburse EPA for all response and oversight costs incurred during the RI/FS process. The RI/FS will address the semiconductor property portion of the Site. The portion of the Site known as the Electronic Systems Sector is presently being addressed by a recently entered consent decree for the RD/RA of the semiconductor property work. The consent decree and this order are structured to incorporate as much of the previous studies and cleanup as possible, while at the same time assuring that Superfund guidance, laws, and regulations are met.

Lehigh Portland Cement Company Site, Mason City, Iowa: On September 29, 1992, EPA issued a UAO to the Lehigh Portland Cement Company (Lehigh). The Administrative Order directs Lehigh to perform the remedial design of the remedy described in the June, 1991 ROD for the Site, and to implement the design by performing a remedial action. The Site is located north of Mason City, in Cerro Gordo County, Iowa. The Site consists of property upon which Lehigh presently operates a cement manufacturing plant and property formerly owned and operated by Lehigh which is now part of a public recreation area known as the Lime Creek Nature Center. Lehigh began cement manufacturing operations at the Site in 1911. Large quantities of cement kiln dust (CKD), a by-product of Lehigh's cement manufacturing processes, have been disposed of on the surface of the Site and in abandoned limestone quarries at the Site which have, over time, filled with water. Data collected during the Remedial Investigation indicate that the CKD disposed at the Site is the source of elevated Ph levels and heavy metals at the Site. Water from the quarries discharges into Calmus

Creek, which is located approximately 1,000 feet south of the Lehigh site, via a tile drain outlet. Studies of the quality of the water in Calmus Creek show that effluents from the Lehigh plant have contributed to the elevation of Ph levels in the creek resulting in deterioration of the water quality and the biological quality of the creek. The estimated cost of the remedy is $5 million. On October 29, 1992, Lehigh notified EPA of its intent to comply with the order.

Lexington County Landfill Superfund Site, Lexington County, South Carolina: On April 14, 1992, Region IV entered into an AOC with Lexington County, South Carolina for the County to perform the RI/FS for the Lexington County Landfill Superfund Site. Lexington County also agreed to pay all of EPA's past costs totaling approximately $174,233.59 as well as future oversight costs.

The Lexington County Landfill Site was permitted by the South Carolina Department of Health and Environmental Control in 1971 to accept household and industrial waste. Since early 1972 Lexington County has operated the Site, and during this period the County accepted hazardous wastes at the landfill which include, but are not limited to: lead, mercury, PCBs, benzene, cadmium, aldrin, and arsenic. The Site was listed on the NPL in October 1989. The County is among 40 PRPs identified for the Site. EPA negotiated with the County to perform the RI/FS after the 39 remaining PRPs failed to submit a good faith offer to EPA pursuant to a CERCLA 122(a) special notice request.

Martha C. Rose Chemicals, Inc. Superfund Site, Holden, Missouri: On September 2, 1992, EPA issued a UAO pursuant to CERCLA §106(a), to 16 generator PRPs for the design and implementation of the remedial action at the above-referenced site in accordance with the ROD issued by Region VII on March 6, 1992.

This non-NPL site is owned by the City of Holden, Missouri. In 1982, the Martha C. Rose Chemicals Company leased the property from the City and began a PCB processing and treatment operation. In March, 1986, the company abandoned the facility leaving behind approximately 14 million pounds of PCBs, PCB items, and other PCB-contaminated materials. As a result of the company's operation, surface and subsurface soils, a nearby creek, and facility structures are contaminated with PCBs. The PRPs to whom the UAO was issued, who are commonly referred to as the Rose Chemicals Steering Committee (RCSC) previously entered into two CERCLA §106(a) AOCs with EPA, one in 1986, and the other in 1987. Under the 1987 order, the RCSC removed and disposed of PCB oil and PCB items that were at the site, and conducted an RI/FS which provided the basis for EPA's ROD. The value of this remedy valued at $13.6 million. The members of RCSC are major utility companies across the nation and a Fortune 500 company. Over 700 generator PRPs have been identified for this Site, including municipal, state, and federal governmental agencies.

In the Matter of Missouri Electric Works Superfund Site, Cape Girardeau, Missouri: A consent decree was lodged on June 29, 1992, that require performance of RD/RA for PCB-contaminated soil and further investigation of PCB contamination in the groundwater at the MEW site. The settlement, which was signed by 179 parties, includes Region VII's first pre-authorized mixed funding settlement, a de minimis settlement and a settlement with three federal agencies. Forty-one (41) Settling Defendants committed to performing the RD/RA activities, which are estimated to cost $15.3 million. EPA agreed to reimburse the Settling Defendants 20 percent of these costs, to a maximum of $3.5 million from the Hazardous Substance Superfund. Settling Defendants also agreed to reimburse EPA for Future Response Costs. One hundred thirty eight (138) De Minimis Settling Defendants and three Settling Federal Agencies participated in cash out provisions included in the Consent Decree.

Mountaineer Refinery Site, La Barge, Wyoming: On September 29, 1992, EPA signed an AOC with twelve PRPs at the Mountaineer Refinery site located in La Barge, Wyoming. The order requires the PRPs to perform all necessary cleanup actions at the site with EPA's oversight, and to reimburse EPA for all past and future response costs. A UAO was issued to nine parties shortly after the AOC was signed in order to bring these recalcitrant parties into the cleanup and cost recovery effort. The PRP committee is working out an agreement with at least three such parties at the time of this writing. Upon agreement among the PRPs, EPA will amend the AOC to include the newly

joined parties. The Removal action is presently under way at the site and is on schedule. This order made a significant contribution to the accelerated site cleanup initiative.

U.S. v. MV Santa Clara (D.S.C.): The sudden disappearance of over four hundred drums of the hazardous substance arsenic trioxide from the ship Santa Clara, in route to Baltimore in the Atlantic Ocean, captured news headlines and resulted in the closure of fishing beds in January 1992. The Coast Guard became interested in asserting jurisdiction over the vessel, and securing appropriate vessel clean-up and drum recovery. They contacted EPA, and Region III staff provided support in guiding the Coast Guard in the novel practice of using Superfund authority for the effective enforcement and oversight of the arsenic trioxide drum recovery. EPA approved expenditure of Superfund monies for the drum search, and worked out an Inter-Agency agreement with the Coast Guard, in order that the Coast Guard could continue the search in the Atlantic for the drums and other containers.

EPA prepared an enforcement case, which was filed by the Department of Justice in May 1992 in the District of South Carolina, where the vessel had come to port, asserting an in rem maritime lien against the vessel for the Coast Guard's and EPA's response costs and for a general Superfund cost recovery action for those costs, which had run over $800,000.

EPA Region III staff also coordinated closely with the Coast Guard in crafting a UAO, based on the authorities of §106 of CERCLA, §311(c) of the CWA and §5 of the Intervention on the High Seas Act, for the owners of the vessel to take over the search at their own expense under Coast Guard direction. This order, the first of its kind, was issued by the Coast Guard in February 1992. The vessel owners, Kyriakopulos International, S.A., a Peruvian corporation, and the vessel operators, Empressa Naviera Santa, S. A., a Panamanian company, took over the response work as directed under the order and performed it under Coast Guard oversight. They successfully recovered over 320 drums.

Naval Education and Training Center Superfund Site, Newport, Rhode Island/Naval Construction Battalion Center Superfund Site, Davisville, Rhode Island: On July 28, 1992, CERCLA §120 Federal Facility Agreements (FFAs) for Superfund cleanups at Naval Education and Training Center Newport (NETC) and Naval Construction Battalion Center Davisville (NCBC), both in Rhode Island, became effective for EPA, the Navy and the state. These facilities are NPL Sites under CERCLA, and NCBC is a closure base under the Defense Base Closure and Realignment Act of 1990. NETC currently serves as the Navy's largest officer training facility and formerly was an active naval facility. It consists of approximately 1400 acres of land. There are ten known or suspected areas of contamination which are being investigated at the site. NCBC consist of 1300 acres. There are fifteen known or suspected areas of contamination which are currently being investigated at the site. The mission of NCBC was to provide mobilization support to naval construction forces.

There were no modifications to the agreements as a result of the public comments. The FFAs identify the parties' responsibilities for compliance and cleanup under CERCLA, RCRA, and state law. The FFAs establish procedures and schedules for developing and implementing appropriate cleanup actions to protect human health and the environment. The FFAs also address off-site contamination associated with activities at the facilities.

Normandy Park Apartments, Temple Terrace; Florida: In June 1992, EPA entered into an AOC with the Gulf Coast Recycling, Inc., for a CERCLA removal action at the Normandy Park Apartments in Temple Terrace, Florida. The removal action is valued at approximately $500,000 and protects residents from excessive lead exposure. Gulf Coast Recycling, Inc., is the current owner of the Normandy Park Apartments Site. Gulf Coast Lead, the predecessor corporation of Gulf Coast Recycling, Inc., operated a lead recycling facility at the Site from 1953 to 1963. Around 1970, the apartment complex was constructed on the Site. Recently, lead chips from battery casings began to surface in the courtyards. Because of the potential health hazards to children living in the complex, EPA determined that a CERCLA removal action to either cap portions of the Site, or solidify certain wastes in place was necessary.

North Carolina State University Site, Raleigh, North Carolina: In April 1992, EPA and North

Carolina State University (NCSU) entered into an AOC for the state to conduct the RI/FS at the school's NPL Site in Raleigh, N.C., pursuant to CERCLA §§ 104(b) and 122. Over the past twenty years, NCSU dumped hazardous waste from its laboratories and reactor into trenches on the school's property. The AOC binds the University to conduct the complete RI/FS, to pay EPA's future oversight costs and to pay $35,000 towards EPA's past costs total of approximately $225,000. EPA reserves its right to collect the remaining past costs during the RD/RA phase. The AOC concludes negotiations for the RI/FS that originally began between the parties in 1987.

Northwest Transformer Harkness Street Superfund Site, Everson, Washington: On June 18, 1992, EPA executed an AOC pursuant to §104 of CERCLA, by which several PRPs agreed to perform the RI/FS for the Northwest Transformer Harkness Street Superfund Site in Everson, Washington. Electrical distributor transformers had been manufactured, repaired, and serviced at the Site from about 1958 until 1987. As a result of these operations dielectric fluid containing polychlorinated biphenyls (PCBs) was released throughout the Site. Pursuant to the AOC, the PRPs will evaluate the nature and extent of the contamination, and develop and evaluate options for remedial action. The PRPs will also reimburse the EPA for response and oversight costs it incurs during the performance of the RI/FS. EPA will perform the risk assessment for the Site.

Organic Chemicals, Inc. (OCI) Superfund Site, Grandville, Michigan: On January 3, 1992, the Director of Region V's Waste Management Division signed a CERCLA §106 UAO for RD/RA at the Organic Chemicals, Inc. (OCI) Site in Grandville, Michigan. OCI is a solvent recycler and chemical manufacturer in Grandville, Michigan. Pursuant to the UAO, approximately 145 PRPs, most of whom were customers of OCI who sent solvents to the site for recycling, will perform an interim action groundwater pump-and-treat remedy to prevent the migration of contaminated groundwater from the upper to the lower groundwater aquifer. The remedy's present worth cost is $5.9 million. An interim-action waiver of groundwater clean-up standards was invoked in the ROD.

On September 21, 1992, the Regional Administrator signed an AOC with 100 de minimis PRP's at the site. Under the terms of the AOC, the PRP's will pay $1,384,714 into a trust account established by the De Minimis Steering Committee. $197,415 of this will reimburse the EPA for a portion of its past response costs at the site. The remaining $1,187,299 will be available for reimbursement of the major PRP's for their implementation of the first operable unit at the site, pursuant to the terms of the UAO.

Petrochem/Ekotek Site Salt Lake City, Utah: The Petrochem/Ekotek Site is located at 1628 North Chicago, in Salt Lake City, Utah. Since the early 1950s, the site operated as a refinery and a used oil/chemical treatment and recycling facility under various names and owners. On November 23, 1988, officials at the Utah Bureau of Solid and Hazardous Waste asked the Environmental Protection Agency to initiate an emergency removal action to prevent the release of hazardous substances from the site. Region VIII's Emergency Response Branch initiated a classic emergency removal action on November 24, 1988, to stabilize the site and to provide 24-hour site security. On August 2, 1989, an AOC pursuant to CERCLA was signed by a group of PRPs who formed the Ekotek Site Remediation Committee. Pursuant to the terms of the order, the Committee performed some of the site cleanup under the oversight of EPA and State of Utah officials. On July 29, 1991, the site was proposed by EPA for listing on the NPL. Work under the order was completed in January of 1992.

On February 25, 1992, EPA's Remedial Program issued Special and General Notice Letters to over 470 PRPs to initiate negotiations for the RI/FS. The AOC for the RI/FS sought recovery of all past costs incurred by EPA during the emergency removal action and the accrued interest ($1.6 million). Negotiations resulted in a signed Consent Order for the RI/FS, and included a negotiated settlement of $1.4 million for past costs.

Pioneer Chlor Alkali, Inc., Henderson, Nevada: In June 1991, Region IX cited Pioneer Chlor Alkali, Inc. of Henderson, Nevada, for violations of the emergency reporting requirements of §103 of CERCLA and §304 of EPCRA. The complaint charged Pioneer with submitting untimely and incomplete notifications of a release of approximately 40 tons of chlorine gas on May 6, 1991. Several emergency responders and local

residents were hospitalized as a result of the release and over one hundred people required medical attention. This administrative civil penalty matter was settled in April 1992 when the Regional Judicial Officer signed a Final Order approving a consent agreement negotiated between EPA and Pioneer. The terms of the settlement required Pioneer to pay a civil penalty of $105,800 and to certify compliance with CERCLA and EPCRA.

Potomac Yard Superfund Site, Alexandria, Virginia: The Potomac Yard Site is operated by Richmond, Fredericksburg and Potomac Railroad Company (RF&P) and is located in Alexandria, Virginia. Initial environmental investigations, including a Preliminary Assessment/Site Investigation (PA/SI) and an Environmental Assessment (EA) indicated the presence of certain hazardous substances on-site. Further evaluation of the property was determined necessary before a decision could be made on whether to propose the Site to be included on the National Priorities List (NPL). Because the Site was proposed for the construction of a National Football League stadium, the Site operators, RF&P, were willing to quickly conduct the additional studies, as well as any cleanup that may be warranted as a result of those studies. The Administrative Order that was entered into by EPA and RF&P combines the elements of a removal assessment, an expanded Site Investigation (for listing considerations) as well as a Remedial Investigation. Physical, on-site cleanup would be conducted under an Engineering Evaluation/Cost Analysis as set forth in 40 C.F.R. § 400.15 (b). The principles of the Superfund Accelerated Cleanup Model, calling for the performance of comprehensive expedited response action, are clearly reflected in the work required by this Agreement.

Raymark Industries, Inc. Superfund Site, Stratford, Connecticut: On September 11, 1992, EPA issued a UAO to Raymark Industries, Inc. pursuant to §106(a) of CERCLA compelling Raymark to perform specified removal activities at its facility in Stratford, Connecticut. This action is a part of an ongoing effort to compel Raymark to address hazardous conditions at its facility and was a joint effort between the Region I CERCLA and RCRA programs. The order requires Raymark to abate the danger or threat to public health, welfare and the environment posed by four open lagoons containing asbestos, metals, solvents, and PCBs; a hazardous waste pile; buildings and land containing hazardous substances; large tanks of questionable integrity containing asbestos and hazardous substances; and the potential for hazardous substances to migrate off-site.

Royster Warehouse Superfund Site, St. Louis, Michigan: On March 3, 1992, Region V issued a UAO to American Cyanamid Company, Ciba-Geigy Corporation, FMC Corporation, and Midwest Building Distributors. The UAO requires these PRPs to perform a soil contamination investigation and remove the soil, if necessary, from the Royster warehouse site in St. Louis, Michigan. EPA estimates that this work will cost approximately $1 million. Herbicides and insecticides contained in the Royster warehouse had been destroyed by fire on April 6, 1991. Hazardous material was released and spread when the fire was extinguished. On April 8, 1991, the Royster Company filed a petition in bankruptcy for reorganization relief under Chapter 11. Under an agreement reached in a CERCLA §106 order, which the bankruptcy court approved, Royster agreed to: 1) treat and dispose the remaining contaminated water, excavated soils, and debris and 2) investigate and remediate any groundwater contamination. The total cost for this work is approximately $505,000. EPA agreed to pursue the other PRPs (the site owner and generators) for the remaining investigation, and possible removal, of contaminated soil.

Jim Sanders Property Site, LaGrange, Kentucky: On November 4, 1991, a UAO was issued to three PRPs at the Jim Sanders Property Site, located in LaGrange, Kentucky. The Site is located in a rural area of LaGrange, Kentucky and is owned by Mr. Jim Sanders. Mr. Sanders conducted a salvage operation on the Site where he stored a large number of junk vehicles, appliances, equipment, and other debris. Mr. Sanders and his family also reside on the Site. The major threat posed by the Site involved over 100 drums of leaking waste varnish and waste solvent. Many of the drums found at the Site had the name "Anaconda" written on them. The UAO was issued to Mr. Jim Sanders, Atlantic Richfield Corporation, parent company to Anaconda, and Mr. Robert Layer, a transporter of waste sent to the Site by Anaconda. Atlantic Richfield Corporation is in full compliance with the UAO.

South Eighth Street Landfill (aka West Memphis Landfill), West Memphis, Arkansas: The South Eighth Street Landfill consists of five pits located within the levee on the West Memphis, Arkansas side of the Mississippi. The site was used as a disposal site for waste sludge from refining processes in the area, and contains solvents and various waste oil substances. In December 1991, EPA commenced to identify PRPs and initiated development of statements of work and the drafting of orders consistent with the Superfund Accelerated Cleanup Model (SACM).

On May 22, 1992, a UAO was issued for the immediate response of fencing the 40 acre site and the conduct of a sludge pit investigation. No PRPs had come forward to indicate a willingness to conduct the RI/FS and on May 23, 1992, the negotiation moratorium ended. A scope of work and associated costs was negotiated during June and July of 1992, and on-site activity commenced on August 3rd. An additional sixty-nine PRPs were identified and issued General Notice on September 9, 1992. The removal action fencing was completed in July, 1992.

UP/Baxter Site, Laramie, Wyoming: Response work at the UP/Baxter site in Laramie, Wyoming has been ongoing since the early 1980s. The site is a former railroad tie and wood products treating plant. Releases of hazardous substances from ponds and other disposal areas have occurred at the plant. The owner of the site, Union Pacific Railroad Company (UPRR), has been performing the work and had previously reimbursed EPA for response costs incurred prior to 1986.

In FY 1992, EPA issued a letter demanding payment of response cost incurred from 1986 to the present. In order to facilitate a quick negotiation and settlement period, both parties agreed to the use of an administrative settlement rather than referring the case and settling with a consent decree. During the negotiations, EPA was faced with the issue of whether the U.S. could recover arguable RCRA oversight costs pursuant to CERCLA §107. EPA took the position that it would pursue recovery of RCRA "remedial action" type oversight costs. This discussion and settlement preceded the final decision on the Rohm & Haas case (790 F. Supp. 1255 (ED Pa. 1992)). One hundred percent ($237,996) of demanded costs were collected under a CERCLA §107 administrative settlement (March 31, 1992).

Walton Farm Superfund Site, Moorestown, New Jersey: Region II issued an AOC to PPG Industries, Inc., providing for implementation of a removal action at the Walton Farm Superfund Site. This is a non-NPL site, which contains approximately one acre of contaminated land located on a 37+ acre rural property. The area which was the subject of the order was used for the disposal of DDT in the 1950s. Soil at the Site was contaminated with DDT and DDT breakdown products in some cases at levels greater then 300,000 ppm. The Site had allegedly been used as a "satellite" dump site for off-spec products that had been formulated at a pesticides formulation facility once owned by PPG Industries located in Moorestown, New Jersey. The order requires that PPG delineate the area of contamination and remove contaminated soil. The estimated cost of the work required by the order was approximately $7 million.

Washington County Landfill: On January 16, 1992, the Director of Region V's Waste Management Division issued a UAO under CERCLA §106 to Washington and Ramsey Counties, both of which are in Minnesota. The order requires the counties to continue operating a pump-and-treat system at the Washington County Landfill in order to prevent contamination from moving toward drinking water wells off-site. The Washington County Landfill is a state-lead site which was placed on the NPL in September 1984. In October 1984, the Minnesota Pollution Control Agency (MPCA) reached agreement with Washington and Ramsey Counties, the joint operators of the Site, on remedial measures to be implemented in order to address the threat to public health and the environment posed by the landfill. The three parties signed a Response Order by Consent under the Minnesota Environmental Response and Liability Act providing for the counties to operate a ground water gradient control system. To protect human health and the environment, continued operation of this system is necessary; however, MPCA no longer has the ability to require such action due to a clause in the state order providing for the order's termination once the counties reach a certain spending limit. MPCA has determined that the limit has been reached and will soon terminate the state order. EPA issued the CERCLA §106 Order to assure uninterrupted operation of the gradient control system. The counties have notified EPA that they intend to comply with the order.

Enforcement Against Non-Settlors

In order to ensure a vigorous and fair enforcement program, EPA has been aggressively pursuing parties who refuse to settle their liability under CERCLA. In FY 1992, EPA brought administrative enforcement actions against over 500 non-settling PRPs at over 50 Superfund sites, requiring clean up actions valued at over $270 million. These cases represent significant enforcement accomplishments for the agency and indicate that EPA has successfully implemented its policy to vigorously pursue non-settling PRPs.

Abex Superfund Site, Portsmouth, Virginia: On March 30, 1992, the Regional Administrator for EPA Region III signed a UAO requiring a $4 million Removal Action at the Abex Superfund Site in Portsmouth, Virginia by Pneumo Abex, the former owner/operator of the Site. The Abex Site was listed on the National Priorities List in August 199 1 and Pneumo Abex is currently performing a RI/FS pursuant to a Consent Order. Preliminary sampling results of the Remedial Investigation indicated high levels of lead in residential areas adjacent to the Site. The UAO was issued after negotiations with Pnuemo Abex failed to result in a Consent Order for the work in a timely manner.

A.O. Polymer Superfund Site, Sparta, New Jersey: On March 31, 1992, Region II issued a UAO for implementation of a cleanup of soil and groundwater contamination at the A.O. Polymer NPL site. The Respondents include the owner/operator of the site, and one generator of hazardous substances released there.

The 4-acre site has been used for resin processing and reclamation of electronic component cleaning fluid, and has an active resin processing facility located on it. Soil contamination is confined to an area where there had once been a disposal lagoon, which is the primary source of groundwater contamination emanating from the Site. The remedy, estimated to cost $4.5 million, requires extraction of contaminants from soils by the use of soil vapor extraction, and addresses groundwater contamination through a powdered activated carbon treatment system.

Aqua-Tech Site, Greer, South Carolina: On April 24, 1992, a UAO under CERCLA § 106 was issued to ninety-seven PRPs at the Aqua-Tech Environmental, Inc. Site located in Greer, South Carolina.

The Aqua-Tech Site consists of approximately 181 acres and is located in a mixed residential/business district. The Site was owned and operated by Groce Laboratories from 1975 through 1987, when the property was sold to Aqua-Tech Environmental, Inc. The Site was used as a waste treatment, storage, recycling, reclaiming and disposal facility and accepted many types of hazardous wastes from off-site sources. EPA estimated that approximately 6,000 drums, 1,000 lab packs, and 500 gas cylinders are currently on-site. The UAO was issued to ninety-seven generators who each shipped at least 5,000 pounds of waste to the Site since 1987. EPA estimates that removal at the site could cost up to $40 million. Under the terms of the UAO, work was to begin on-site on May 4, 1992.

Arlington Blending & Packaging Site, Arlington, Tennessee: On January 30, 1992, EPA Region IV issued a UAO for RD/RA pursuant to §106 of CERCLA against several pesticide manufacturers to address the contamination at the Arlington Blending & Packaging Site in Arlington, Tennessee. The respondents to the administrative order are Velsicol Chemical Corp., Terminix International, Chemwood Corp., Ciba-Geigy Corp., and Wormald U.S., Inc., as well as William Bell, a former owner and operator of the Site. The Site was a pesticide blending and packaging facility, now defunct and contaminated with a variety of pesticides and solvents. The respondent pesticide manufacturers sent technical grade pesticides – and in some cases, solvents – to the facility for formulation and packaging. EPA maintains that the formulation agreement constituted at least an implicit arrangement for disposal. A judicial action under §107 of CERCLA, filed in 1987 against three of the respondents (Velsicol, Terminix, and Bell) and several other parties to recover response costs incurred in conducting a removal at the Site, is currently pending in district court.

The respondents had failed to make an acceptable offer to conduct the remedial design and remedial action before the close of the negotiation moratorium under §122(e). The respondents were willing only to conduct the remedial design. Consequently, EPA issued a

unilateral administrative order requiring the respondents to conduct both the remedial design and the remedial action.

Avco Superfund Site, Williamsport, Pennsylvania: On May 7, 1992, Region III issued a UAO for RD/RA at the Avco Lycoming Superfund Site. The order was issued to Avco Corporation, which has owned and operated an aircraft engine manufacturing plant on the Site since the 1920s. The order directs Avco to perform on-site extraction and treatment of contaminated groundwater, at an estimated cost of $9.3 million.

Beaver Wood Products Site, Columbia Heights, Montana: On October 22, 1991, Region VIII issued a UAO to several PRPs for a removal action at the Beaver Wood Products Site in Columbia Heights, Montana. The Site contains a post and pole treating facility which has contaminated the soil with PCP, dioxin, and furan.

The order requires the owners and operators of the Site to place a six-inch gravel cap over contaminated soils and provide site security by erecting a six-foot chain-link or hog-wire fence around the perimeter of the Site.

Bern Metals Superfund Site, Buffalo, New York: On September 19, 1992, Region II issued a UAO pursuant to §106 of CERCLA, to General Motors Corporation, Buffalo Color Corporation, National Fuel and Gas Distribution Corporation, New York State Electric & Gas Corporation and Allied Signal Corporation. The order will require the Respondents to repair and maintain a fence surrounding the Bern Metal Site. Since September 1987, EPA has performed several response actions at the Site including the excavation and disposal of contaminated soils and drums.

Charles Town Coal Tar Site, Jefferson County, West Virginia: On January 28, 1992 Region III issued a UAO against non-settling parties, Roger J. Perry, William C. Perry and Mary B. Smith for phase II removal response activities at the Charles Town Coal Tar Site. The Respondents are the owners of the Site, which is already undergoing a removal cleanup under an AOC entered into with another party, Supertane Gas Corporation. The UAO requires the Respondents to commence and complete performance of the work consistent with the work to be performed by Supertane under the AOC. The work, estimated to cost over $1 million, includes soil removal and groundwater remediation to remove coal tar and associated organic chemicals created by a coal gas fuel generating facility previously located on the Site.

Chem Air Spray Site, Bryant, Palm Beach County, Florida: On April 1, 1992, EPA Region IV issued a UAO to New Farm, Inc., Juan Montalvo, and Chem Air Spray, Inc. for the Chem Air Spray Site near Bryant, Florida. Chem Air Spray, Inc., operated a pesticide formulating and application facility at the Site from 1972 to 1985. Sampling conducted by EPA and the Florida Department of Environmental Regulation (FDER) showed high concentrations of toxaphene and methyl parathion at the Site. The parties are conducing the removal activities. Additionally, New Farm, Inc., and the South Florida Water Management District conducted a RI/FS under a FDER AOC. The results of the RI/FS are being reviewed by FDER, and remediation activities at the Site will be administered by FDER.

Chemical Sales Co. Superfund Site, Denver, Colorado: On January 27, 1992, Region VIII issued a UAO under §106 of CERCLA to Chemical Sales Co. and other respondents for RD/RA and past costs at Operable Unit #1 of the Chemical Sales Superfund Site. Negotiations for RD/RA broke down after several months, thus necessitating the issuance of the order. Although CSC filed a Chapter 11 petition for Bankruptcy protection on February 21, 1992, it is currently in substantive compliance with the UAO.

Cherokee Resources, Inc., Charlotte, North Carolina: On September 23, 1992, Region IV issued a UAO to obtain access to the Cherokee Resources, Inc. Site. Cherokee Resources, Inc., revoked oral consent for access after its takings claim was dismissed from the Western District of North Carolina federal court for lack of jurisdiction. The Region is conducting a fund-lead removal of over 4000 drums of hazardous substances, including cyanide waste, at this drum storage facility which is bounded by residences and businesses.

Clinton/Bender Removal Site, Buffalo, New York: On June 19, 1992, Region II issued a UAO directing five generator PRPs to remove and dispose of contaminated soils from residential

and commercial property at the Clinton Street and Bender Avenue Removal Site in Buffalo, New York. The site is adjacent to the Bern Metals Removal Site and was contaminated by runoff from the Bern Metals Site.

The five Respondents to the unilateral order, General Motors Corporation, Buffalo Color Corporation, National Fuel & Gas Distribution Corporation, New York State Electric & Gas Corp. and Allied-Signal Corporation, are industrial generators who arranged for treatment or disposal of hazardous substances which were disposed of at the Bern Metals Site, a scrap metal reprocessing facility. The elevation of the Bern Metals Site caused the migration of contaminants, including lead and copper, via surfacewater runoff, into the yards of nine residential homes, four apartments, and one business located within the Site. Lead was present in surface soils in levels of up to 18,930 ppm.

Results of the sampling conducted at the Site were forwarded to the Agency for Toxic Substances and Disease Registry which issued an advisory to the residents at the Site warning them to refrain from digging in the soils and directing that parents not allow children to play in any exposed soil areas.

The order calls for the excavation of contaminated soils to meet cleanup levels established by EPA and replacement of the excavated soils with clean fill. The order also calls for the voluntary temporary relocation of the Site residents during the excavation and during the period their homes and accessory structures are surveyed, sampled, and assessed for any structural damage. Finally, the order calls for proper off-site disposal of contaminated soils and the grading and partial capping of the abutting portions of the Bern Metals Site. The work is expected to cost about $2 million.

C & R Battery Company, Inc. Site, Chesterfield County, Virginia: On March 27, 1992, EPA issued a UAO pursuant to §106 of CERCLA, requiring twenty-one respondents to perform remedial action at the C & R Battery Company, Inc. Site, in Chesterfield County, Virginia. The UAO directs the respondents to perform the remedial action as set forth in a ROD issued on March 30, 1990, which includes the excavation of surface and subsurface soil containing lead above an 1000 mg/kg action level and sediments above a 450 mg/kg action level, treating them with a stabilization process and then disposing of the soils in an off-site RCRA approved landfill. Remedial action at the site is expected to cost $13,400,000.

DeRewal Chemical Company Site, New Jersey: On September 17, 1992, Region II issued an Administrative Order for access pursuant to §104(e) of CERCLA, to the owner of a portion of the DeRewal Chemical Company Superfund Site. The owner, Jack Ford, had not responded to numerous requests to sign a voluntary access agreement.

The approximately 3.7 acre site is located in Kingwood Township, New Jersey and was leased by the DeRewal Chemical Company during the early 1970s. DeRewal used the Site to store a variety of hazardous substances and to manufacture an agricultural fungicide and a textile preservative. EPA received reports that numerous spills occurred during the period that DeRewal leased the Site. The Site has been placed on the National Priorities List and the remedial design is presently underway.

Ellis Industrial Warehouse Site, Miami, Florida: On December 27, 1991, a UAO was issued requiring the respondents to conduct a removal action to respond to a release and threat of release caused by chemicals stored at a warehouse. The Respondents include Pumo Enterprises, which owned the warehouse and Hal Ellis, an independent chemist who was renting the laboratories.

On December 19, 1991, local officials responded to a fire at the warehouse. Upon entering the building, officials discovered over 100 boxes in which various containers of chemicals were haphazardly packed. These chemicals, which appear to have caused the fire, were packed without regard for compatibility, were in leaking containers, and included shock sensitive and air reactive chemicals. The local officials notified the state and then EPA. EPA responded to the Site on December 20, 1991, and arranged for the Miami bomb squad to detonate some containers of shock sensitive materials.

Enterprise Oil Removal Site, Detroit, Michigan: EPA issued a UAO for removal of soil and tanks

containing used oil at the Enterprise Oil Removal Site in Detroit Michigan. The Site, which was formerly used as a waste oil storage terminal, is located in downtown Detroit, close to private residences, a school and small businesses. The UAO was issued to Moreco after after negotiations for a consent order were unsuccessful. Moreco complied with the order initially, then fell out of compliance and filed for protection under Chapter 11 of the Bankruptcy Code. The case was settled pursuant to the reorganization plan and a settlement agreement and stipulated order was entered in December 1992 resolving Moreco's liability at the Site.

General Motors Corporation, Massena, New York: Region II issued two unilateral administrative orders to GM for RD/RA at its Massena, New York plant. GM manufactures cast aluminum engine blocks at this plant. The facility has been a significant source of PCB contamination in the adjacent St. Lawrence River; the contamination has also affected the nearby Akwesasne Indian Reservation. The two orders address two operable units of the remedy. The first order was issued in March and requires, inter alia, dredging of PCB-contaminated sediment from the River, treatment of contaminated groundwater, and removal of contaminated soils. This work has an estimated value of $78 million. The second order, issued in August, requires capping of a landfill on the site, and other related activities, with an estimated value of $45 million. The combined value of the two orders is thus $123 million. GM has agreed to comply with both orders.

Upriver on the St. Lawrence, and further upstream on its tributary the Grass River, are plants operated by ALCOA and Reynolds Aluminum Corp., which have also contributed PCB and other contamination to this river system. In 1989 Region II issued UAOs to ALCOA and GMC requiring investigation and remediation of that contamination.

Gould Superfund Site, Portland, Oregon: On January 22, 1992, EPA issued a UAO pursuant to §106 of CERCLA, to NL Industries, Inc., Gould, Inc., Johnson Controls, Inc., Exide, Inc., AT&T Technologies, Inc., Rhone-Poulenc, and Burlington Northern Railroad Co. (Gould PRPs). The UAO dictated that the Gould PRPs perform the remedial action for the Soils Unit of the Gould Superfund Site in Portland, Oregon. The prescribed remedial action, which was developed by Canonie Environmental on behalf of NL Industries, Inc., involves the excavation of buried battery casings and other materials, treatment of the excavated material to produce recyclable products, off-site recycling of materials that can be recycled, stabilization and on-site disposal of materials which can not be recycled, and closure and monitoring to ensure that the remedial action satisfies the cleanup goals set forth in the ROD for the Soils Unit. The UAO further requires the Gould PRPs to reimburse the EPA for oversight costs it incurs during the performance of remedial action.

Hertel Landfill Site, Ulster County, New York: On September 21, 1992, Region II issued a UAO to Ford Motor Company, Western Publishing Company, Inc. and various other parties requiring them to undertake remedial action at the Hertel Landfill Site in Ulster County, New York. The landfill was in operation from 1963 until 1977 and received both hazardous and solid waste. The remedy, which has a present worth cost of $8.2 million, includes constructing a multi-layer cap, installing gas vents, implementing a comprehensive groundwater-monitoring program, and fencing the 13-acre landfill. Groundwater will be treated to remove metals and organics and to mitigate the potential harmful impacts to adjacent wetlands.

Kansas City Structural Steel/Bancamerica Superfund Site, Kansas City, Kansas: A UAO was issued to ASARCO on December 11, 1991. The order requires ASARCO to conduct a removal action at the Site and in so doing, to coordinate and cooperate with Bancamerica Commercial Corporation, who signed an AOC in February, 1990, wherein it agreed to perform a removal at the Site. The UAO to ASARCO also demands payment of EPA's oversight costs.

Macon/Dockery Superfund Site, Cordova, North Carolina: On June 18, 1992, EPA Region IV issued a UAO for RD/RA pursuant to §106 of CERCLA against eleven responsible parties (five individual property owners, one corporate owner/operator, and five corporate generators) to address the Macon/Dockery site in Cordova, North Carolina. The site, also known as the Charles Macon Lagoon and Drum Storage site, was operated by Charles Macon and C & M Oil Distributors in the 1970's and early 1980's for the

recycling of used oil, industrial solvents, anti-freeze, and assorted other chemical wastes. In 1983, EPA conducted a removal action at the site, draining approximately one-dozen lagoons filled with used oil and hazardous substances, and removing approximately 2,000 drums filled with chemical waste. EPA recovered the costs of this removal action in a prior settlement. Groundwater monitoring at the site revealed widespread contamination by organic and inorganic contaminants, and EPA placed the site on the National Priorities List (NPL). During settlement negotiations for performance of the RD/RA, the responsible parties objected to the EPA Model RD/RA Consent Decree and to the schedule in EPA's Scope of Work, and negotiations broke down. Consequently, EPA issued the UAO requiring the respondents to conduct the RD/RA, which consists of extraction and treatment of contaminated groundwater, soil vapor extraction to remove volatile organic compounds from site soils, bioremediation to treat soils contaminated with polynuclear aromatic hydrocarbons, and disposal of tanks and containers. The remedy is expected to cost $8.7 million.

Main Street Well Field Site, Elkhart, Indiana: On February 20, 1992, Region V issued a UAO to nine PRPs to conduct remedial activities, including soil vapor extraction, installation of interceptor wells, and continued operation and maintenance of an air stripper that became operational in 1987 as the first operable unit at the Site. The cost of implementing this remedy has been estimated at $1.5 million in construction costs plus $130,000 in annual operation and maintenance costs.

The Main Street Well Field provides approximately 80% of the City of Elkhart's drinking water needs. In 1985, in response to the discovery of elevated levels of volatile organic compounds in the groundwater, EPA conducted a RI/FS, which culminated in construction of the air stripping facility that was the remedy selected for the City's contaminated water supply. The subject of this UAO is source and plume control to prevent further contamination beneath and upgradient of the well field. This is expected to be a final operable unit.

Mallory Capacitor Site, Waynesboro, Tennessee: On March 4, 1992, EPA Region IV issued a UAO for RD/RA pursuant to §106 of CERCLA against Battery Properties, Inc. to address the Mallory Capacitor Site in Waynesboro, Tennessee. Battery Properties, Inc., the respondent, is the sole responsible party. The Mallory Capacitor Site is a former electrical component manufacturing facility. Groundwater at the Site is contaminated with high levels of polychlorinated biphenyls PCBs, trichloroethylene TCE, and other organic solvents. The Site is located adjacent to a residential area.

The Respondent was unwilling to commit to full performance of the remedy, and settlement negotiations for the RD/RA broke down. Consequently, EPA issued the UAO requiring the respondents to conduct the RD/RA, which consists of extraction and treatment of contaminated groundwater and institutional controls. The remedy is expected to cost approximately $3 million.

Mouat Industries Superfund Site, Columbus, Montana: On November 12, 1991, five responsible parties for the Mouat Industries NPL Site were issued a UAO to undertake cleanup of soils. The parties liable under the terms set forth in the UAO are: the Town of Columbus, past and present owner of the Site; operators of the Site; Mouat Industries, Monte Vista Company, FMC Company, and Timberweld Manufacturing Company.

The Mouat Site is located just south of the airport in Columbus, Stillwater County, Montana. It is situated in the flood plain of the Yellowstone River and is less than 0.6 miles north of the present river channel. Groundwaters at the Mouat Site are contaminated with chromium and arsenic. Additionally, soils, sediments, and surface waters both on-site and off-site are contaminated. The contamination is the result of operations at a processing plant which converted chromium ore into high-grade sodium dichromate. By-products of the process were sodium sulfate wastes containing hexavalent chromium. There were dichromate spills and leaching into the surrounding soils and groundwater from the piles of sulfate wastes. FMC Company prepared a work plan for the removal action, and pilot testing of the soil treatment system was conducted on November 16-17, 1992. Due to severe weather conditions during the winter months, the cleanup is scheduled to begin in the Spring of 1993. It is anticipated that complete cleanup of the source materials will be

achieved by this removal action resulting in no further remedial action for soils at the Site.

This enforcement action supports the Headquarters/Regional Priority to accelerate site cleanup and incorporates innovative use of CERCLA Removal authorities to comprehensively address soils cleanup at this NPL Site.

NCR Corporation (Millsboro Plant) Superfund Site, Millsboro, Sussex County, Delaware: On March 31, 1992, EPA issued a UAO for RD/RA. The action is expected to cost approximately $5 million. EPA made the decision to issue the order after the PRPs failed to submit an acceptable settlement offer under §122(e) of CERCLA.

The major PRP, NCR Corporation, refused to comply with the order and sought a temporary restraining order, claiming that a consent order previously entered into with the State of Delaware, to which EPA was not a party, released NCR from all CERCLA claims. The District Court for the District of Delaware dismissed the action, finding that it was precluded by the bar to preenforcement review under § 113(h). NCR Corporation v. Edwin B. Erickson, EPA, et. al., Civ. Action No 92-231. Subsequently, NCR agreed to seek dismissal of the prior state order and has begun to comply with the UAO.

NL Industries Superfund Site, New Jersey: On March 31, 1992, Region II issued a UAO under §106(a) of CERCLA to 31 PRPs for the performance of the remedy contained in the ROD of September 27, 1991, expected to cost $5,300,000. The Site is comprised of real property approximately 44 acres in size and includes an inactive secondary lead smelter which operated as a lead recycling facility accepting waste in the form of lead dross, scrap lead and battery plates. The order requires the 31 PRPs to clean up lead contaminated slag materials, lead oxide materials, and lead contaminated surfaces, standing water and sediments. The PRPs include a former owner and operator of the Site and parties who sent lead waste to the Site for recycling. The order follows an administrative order on consent with a PRP for the performance of a site-wide RI/FS, and two removal actions and a focused feasibility study performed by EPA.

Oak Grove Superfund Site, Minneapolis, Anoka County, Minnesota: On December 23, 1991, over 100 PRPs received a UAO requiring them to perform cleanup work valued at $6.3 million after negotiations for remedial design and remedial action broke down. Fifty-six recipients of the order, including Waste Management, Browning Ferris, 3M, Pillsbury, Chicago Northwestern Transportation, Consolidated Container Corporation (a subsidiary of Ralston Purina), Control Data Corp., Eastman Kodak, and Honeywell, are in compliance with the order and are currently involved in cleaning up the site through installing a landfill cover and down gradient monitoring wells. The Site is located in Anoka County, Minnesota.

Negotiations are underway for recovery of past response costs, future oversite costs, and additional work from these parties, which will be enforced through a consent decree. Significant policy issues are being addressed in this case, which involves municipality de minimis contributors.

Old City of York Landfill Site, Springfield Township, York County, Pennsylvania: On June 30, 1992, the Regional Administrator for Region III issued a UAO pursuant to §106 of CERCLA, to Service America Corporation, Rite-Way Services, Inc., York Wrecking, Inc., Stewart and March, Inc., Litton Industrial Automation Systems, Inc. and A.B. Chance Company, Inc. requiring them to perform the RD/RA at the Old City of York Landfill Site, Springfield Township, York County, Pennsylvania. The selected remedy includes the restoration of a soil cover over a portion of the Site, ground water pump-and-treat and removal of contaminated sediments from on-site collection vaults. The expected cost is $8 million. The landfill was owned by the City of York from 1961 through 1975.

Paramount Communications, Palmerton, Pennsylvania: On February 11, 1992, the Regional Administrator for Region III signed a UAO which directs Paramount Communications, Inc. to perform an extent of contamination study in the borough of Palmerton, Pennsylvania, to determine how many homes are contaminated by high levels of lead-contaminated dust. This Removal Action was deemed necessary by EPA after it performed sampling and analysis of twenty-four homes in Palmerton and found high levels of lead

inside the homes and on porches. Paramount is the former owner/operator of the facility responsible for the contamination.

EPA attempted to negotiate a consent order with Paramount and Horsehead Industries, Inc. for the clean up of the homes already identified and the extent of contamination study to identify other homes which have been contaminated by lead dust. Horsehead eventually agreed to clean up the interior of the homes, but Paramount refused to participate.

Port Refinery Superfund Site: On March 24, 1992, Region II issued an Administrative Order for access to the Port Refinery Co., Inc. to Edmund Barbera and Norma Barbera pursuant to §104(e) of CERCLA. EPA has been conducting a removal action at the Port Refinery Superfund Site to address mercury contamination found there. Because respondents denied EPA access to the Site to conduct the response action, they were ordered to provide EPA with all access to the property, including the interior of its structures necessary for EPA to take this response action. Respondents also were ordered to refrain from excavating and/or moving the soils at the Site and taking any other actions that interfere with EPA's access to or response activities at the Site.

Precision Coil and Spring Company. El Monte, California: On October 29, 1991, EPA issued an Administrative Order pursuant to §106 of CERCLA, to Precision Coil and Spring Company in El Monte, California, ordering them to conduct a facility Remedial Investigation. This order was issued after the facility refused to comply with the Regional Water Quality Control Board's directives for submission of a satisfactory facility investigation workplan. Precision Coil and Spring Company is located within the San Gabriel Valley Superfund Sites, Areas 1-4.

Purity Oil Sales Superfund Site. Fresno, California: On September 30, 1992, Region IX issued an order under §106 of CERCLA, directing nine PRPs at the Purity Oil Sales Superfund Site to conduct the RD/RA at the Site. The Region is currently negotiating with other PRPs to recover past response costs associated with the RI/FS.

Purity Oil Sales operated as an oil recycling facility in Fresno, California from approximately 1937-1974. Purity picked up waste oil from service stations, car dealerships, industry, military installations, governmental entities, etc. The Region issued special notice letters to 87 PRPs in April, 1992. The Region and the PRPs were unable to reach settlement.

Revere Superfund Site. Nochamixon, Pennsylvania: A UAO was signed by the Regional Administrator on December 13, 1991, directing the following PRPs to conduct a removal action at the Revere Site: AT&T; Carpenter Technologies Corp.; GTE Products Corp.; IBM; Unisys Corp.; Quantel Corp.; Vates Industries Corp.; East Falls Corp.; Harbucks Corp; and Manfred DeRewal. The remedy required by this order includes removal of heavy metals from soils and groundwater at the Site. The Site was formerly used by a number of the listed PRPs as a metal reclamation facility.

Rockaway Metal Products Site, Inwood. New York: Region II issued a UAO to 175 Inwood Associates, requiring the performance of a removal action. The Site formerly was leased from the Respondent by Rockaway Metal Products, Inc. (Rockaway), which conducted a manufacturing operation at the Site. After filing for bankruptcy protection, Rockaway abandoned the Site in 1989, leaving behind various hazardous substances stored in tanks, drums and other containers. The removal action required by the UAO includes the removal, treatment and/or disposal of drums, underground storage tanks, pressurized cylinders, a tanker-trailer and its contents, and contaminated soil.

Robintech, Inc./National Pipe Co. Site. Vestal, New York: On September 30, 1992, Region II issued a UAO for RD/RA to Buffton Corporation and Electro-Mech, Inc. The order requires those companies to implement the remedy selected in EPA's ROD which calls for pumping and treatment of groundwater at the Vestal, New York Site. Groundwater at the Site is contaminated with volatile organic compounds. Buffton Corp. is the current owner of the Site, and was also an owner of the Site at the time of disposal of hazardous substances. Both Buffton and Electro-Mech refused to agree to conduct the remedy pursuant to a consent decree.

San Fernando Valley Superfund Site, Burbank Operable Unit. Burbank, California: On March 26, 1992, EPA unilaterally issued an order

perform the surface soils remedy selected for the refinery portion of the site, and to implement the capping of the landfill portion. The remedial work generally involves: (a) excavation of the refinery soils which exceed approved levels for arsenic and lead; (b) any necessary treatment of those soils; (c) placing the soils into the central elevated landfill area (CELA) on site, and (d) capping the CELA. This work has an estimated value of $4.5 million.

The second order, issued in September, directs ARCO to carry out the remaining elements of the second operable unit of the remedy, concerning treatment of contaminated groundwater. This work has an estimated value of $13.2 million.

ARCO was already performing a portion of the remedial action for the landfill section of the site under a 1989 consent decree. ARCO also performed the RI/FS under a 1988 consent order. The ROD was issued in September, 1991. Finally, pursuant to a June, 1991 consent order, ARCO decontaminated and decommissioned an oil/water separator (contaminated by heavy metals and organics) and addressed deteriorating asbestos at a warehouse on site.

Thermochem Superfund Site. Muskegan, Michigan: EPA issued a §106 UAO for RD/RA to 18 parties on May 6, 1992. Sixteen of these parties responded that they would be willing to either a) conduct work limited to a portion of the Site or b) pay $27.5 million dollars (the remedy is expected to cost $24.3 million) based on their share of waste contribution and a premium.

Triangle Petroleum Site. Fruita, Colorado: On August 20, 1992, Region VIII issued a UAO for a removal action at the Triangle Petroleum Site, a former waste oil recycling operation in Fruita, Colorado. Named respondents include the former operators of the facility, the property owner, and several generators (including Pepsi Cola and Wagner Equipment). None of the respondents had expressed an interest in executing an administrative order on consent. The effective date of the order was August 27, 1992.

Tri-City Industrial Disposal Site, Operable Unit #1. Brooks, Bullitt County, Kentucky: After negotiations failed to result in a consent decree, Region IV issued a UAO to Waste Management of Kentucky, Inc., Ford Motor Company, Inc., and Dow Corning Corporation for the performance of the RD/RA for Operable Unit # 1 on March 4, 1992. All three PRPs sent notice to the region indicating their intent to comply with the UAO.

The Site was an industrial landfill operated by Tri-City Industrial Services, Inc., from 1964 until 1967. Waste Management of Kentucky, Inc., is the corporate successor to Tri-City Industrial Services, Inc. Ford Motor Company, Inc., and Dow Corning Corporation arranged for the disposal of hazardous substances at the Site. The remedial action to be conducted for Operable Unit # 1 includes the treatment of groundwater as it reaches the surface as springs, continued provision of an alternative water supply, implementation of institutional controls, confirmatory sampling to determine if additional source remediation is necessary, and long-term monitoring.

Verona Well Field. Battle Creek, Michigan: On February 19, 1992, and May 5, 1992, Region V issued two UAOs for RD/RA work valuded at $15.3 million pursuant to §106(a) of CERCLA, to 26 PRPs at the Verona Well Field Site in Battle Creek, Michigan. The RD/RA is intended to implement a ROD calling for the cleanup of solvent-contaminated source areas and the Well Field itself. The Verona Well Field is the primary source of drinking water for the City of Battle Creek, Michigan. The UAOs were issued after attempts to negotiate a consent decree failed.

Warwick Landfill Superfund Site. Warwick, New York: Region II issued a CERCLA unilateral administrative order against six PRPs on February 28, 1992. They were ordered to perform the RD/RA for the first operable unit at the Warwick Landfill site. The respondents are Ford Motor Company, Georgia-Pacific Corp., I.S.A. in New Jersey, Inc., Round Lake Sanitation Corporation, Union Carbide Corporation, and the Town of Warwick, New York.

The Warwick Landfill Site, was operated by the Town of Warwick primarily as a municipal landfill from the mid-1950s through 1977. Between 1977 and 1980, the site was operated privately by Grace Disposal and Leasing. Georgia-Pacific, Ford and Union Carbide were generators of hazardous substances disposed of at the landfill; I.S.A. and Round Lake were transporters.

pursuant to CERCLA §106 to Aeroquip Corporation, Crane Company, Inc., Janco Corporation, Sargent Industries, Inc., Ocean Technology, Inc., and the Antonini Family Trust, for remedial design and remedial action work at the Burbank Operable Unit of the San Fernando Valley Superfund Site. The work covered is the design, construction and non-routine maintenance of a blending facility. The estimated cost of this work, which was "carved-out" from the other work required to implement this interim remedy is $2.5 million. The facility will be used to take groundwater previously treated to remove volatile organic compounds (VOCs) but high in nitrates and mix it with water not containing nitrates in excess of the MCL. The treated and blended water will then be delivered to the City of Burbank's public water supply system.

Issuance of this order follows the entry of a consent decree in the case of U.S. v. Lockheed Corporation, et. al. That settlement, reached with the Lockheed Corporation, the City of Burbank and Weber Aircraft, Inc., covered the design, construction and two years of operation and maintenance of a groundwater extraction and treatment system, as well as delivery of the water to the City of Burbank's public water supply system and/or reinjection of the water into the aquifer and payment of approximately $2 million in past costs. Two portions of work required to implement the interim remedy were "carved-out" of the consent decree so the EPA could involve additional PRPs in the remedial work. This order covers the smaller portion of the carved-out work.

An interim ROD for the Burbank Operable Unit of the San Fernando Valley Superfund Site was signed in 1989, and in November of 1990 an Explanation of Significant Differences was issued. The remedy selected was design, construction and twenty years of operation and maintenance of a 12,000 gallons per minute groundwater extraction and treatment system.

Sapp Battery Superfund Site, Cottondale, Florida: On January 2, 1992, §106 UAOs were issued to thirty-nine of the PRP's at the Sapp Battery Superfund Site requiring them to perform RD/RA work valued at $18 million at the Site. In May 1991, approximately 250 Special Notice Letters were issued to PRPs at the Site, which is located on property used as a battery-cracking operation in the 1970's and early 1980's. A viable steering committee composed of approximately sixty PRPs had formed and active negotiations were taking place between it and EPA with the objective on having a signed consent decree for the PRPs to perform the work. However, the moratorium for negotiations expired on December 19, 1991, without the consent decree being signed. Consequently, these 106 orders with a delayed effective date of February 3, 1992, were issued to 39 of the PRPs based upon a volumetric ranking of their contribution of hazardous waste to the Site. Thirteen of the thirty-nine Respondents signed the consent decree by the effective date. The twenty-six Respondents that failed to sign the consent decree are under a Continuing Order to Cooperate and Assist the Respondents who signed the consent decree as well as to perform all work required under the order not addressed under the terms of the consent decree.

Silver Bow Creek/Butte Area Site, Butte, Montana: On November 20, 1991 Region VIII issued a UAO pursuant to §106(a) of the CERCLA, to the Atlantic Richfield Company (ARCO) to conduct a complete removal of the mining wastes and contaminated soils laden with arsenic and lead at the Colorado Smelter Site within the Butte County Soils Operable Unit of the Silver Bow Creek/Butte Area NPL Site. In August, 1992, Region VIII issued a §106(a) UAO to ARCO for removal of soils at the Anselmo Mine area at the same Site. An earlier UAO was issued to ARCO for the development and implementation of a ROD for the Warm Springs Pond Active Area Operable Unit at the Silver Bow Creek/Butte Area NPL Site on September 25, 1991, after consent decree negotiations for the ROD implementation broke down.

Sinclair Refinery, Wellsville, New York: On May 1, 1992, EPA Region II issued a UAO to the Atlantic Richfield Company (ARCO) pursuant to CERCLA §106(a) to perform remedial work at the Sinclair Refinery Superfund Site near Wellsville, New York. The 110 acre NPL site consists of two principal areas, a landfill area and a refinery area. The Sinclair Refining Company owned and operated the site as an oil refinery and manufactured petroleum products there between 1919 and 1958. In 1969 Sinclair merged with ARCO.

The first order, issued in May, directs ARCO to

The order requires the PRPs to carry out the remedial action, which involves capping the landfill; monitoring gas emissions and groundwater; and sampling residential wells, with installation of point of use treatment systems for wells which exceed maximum contamination levels (MCL). The remedy is estimated to cost $14.2 million. In September a separate administrative consent order was issued to the same parties requiring performance of the RI/FS for the second operable unit at this site.

White Chemical Corporation Superfund Site, Newark, New Jersey: Region II issued a UAO for remedial action in March 1992, for remedial action with respect to surface contamination at the White Chemical Corporation Superfund Site. The site was placed on the NPL in September 1991. A ROD was prepared immediately following completion of a focused feasibility study. The remedy selected includes continuation of the removal action which EPA had already initiated, and pretreatment or neutralization of contaminated material. The estimated cost is $22 million. Completion is expected before Spring 1993.

White Chemical manufactured acid chlorides, alkyl bromides and brominated flame retardant compounds on the site, from August 1982 to October 1990, as a lessee of the landowner, AZS Corporation, and stored its hazardous wastes on site. In addition, White Chemical manufactured products for its customers according to formulation agreements, pursuant to which it charged a fee for manufacturing products from materials supplied and owned by its customers throughout the manufacturing process. The PRPs include the landowner, two operators, and eight generators.

EPA began removal action in October 1990 at the request of the New Jersey Department of Environmental Protection and Energy. The site contained approximately 11,000 drums of hazardous substances as well as tanks, laboratory containers and other polluted material. By late 1992, all the drums had been removed from the site, along with the contents of 117 out of 126 tanks. EPA has incurred costs of $14.5 million. The PRPs are conducting the remainder of the cleanup, which includes removal of 12,000 laboratory containers and a number of gas cylinders, among other items.

White Farm Equipment Dump Site, Charles City, Iowa: On September 18, 1992, the District Court in the Northern District of Iowa entered a CERCLA remedial action consent decree between the U.S. and Allied Productions Corporation. The consent decree obligates Allied to implement a remedial action at the White Farm Equipment Dump Site in Charles City, Iowa. The principal components of the remedy are extraction and treatment of contaminated groundwater and capping a 5-acre landfill at the Site. One unique feature of the remedy is that Allied is going to use non-hazardous foundry sand waste that is generated at a manufacturing plant near the Site as material for a portion of the cap. This exemplifies an innovative, cost-effective remedial approaches.

On July 21, 1992, the United States filed a CERCLA §107 cost recovery action against TIC United and TIC Investment Corp., seeking recovery of approximately $500,000 in past costs incurred by the United States with respect to the White Farm Site. From 1980 to 1985, the TIC companies controlled a company which disposed of hazardous substances at the Site, refused to participate in settlement negotiations. The filing of this case shows the Agency's intent to vigorously pursue non-settlors at Superfund sites.

Willow Drums Superfund Site, Newberry, Michigan: On March 5, 1992, EPA Region V issued a UAO to Chrysler Corporation for removal action at the Willow Drums Site in Newberry, Michigan. The order requires Chrysler to remove approximately 2000 drums from the Site, perform containment and prepare an extent of contamination study. EPA expects to recover over $1 million in oversight costs from Chrysler.

Treble Damage Cases

Administrative orders to perform cleanup at Superfund Sites are an important part of EPA's efforts to protect health and the environment. When responsible parties refuse to comply with administrative orders; EPA is authorized to levy penalties of up to $25,000 for each day of non-compliance. In cases where EPA must take over cleanup activities of the site, the statute authorizes recovery of up to three times EPA's costs incurred in cleanup as a punitive measure to prevent non-compliance with administrative orders. Following are two cases where EPA

recovered the costs of cleanup actions and additional punitive damages.

U.S. v. LeCarreaux and Lightman Drum Co., (D.N.J.): The District Court for the District of New Jersey granted the highest penalty and damages ever awarded to the government in any Superfund case nationwide. Additionally, it was the first time that both treble damages and penalties were awarded, and was the first adjudicated case nationally to award daily civil penalties under §106(b) of CERCLA. The court awarded nearly $3.9 million in penalties and treble damages for defendants' violation of unilateral cleanup orders, adopting in its entirety the government's request for all costs (nearly $350,000), plus civil penalties and treble damages amounting to nearly $3.9 million. This is the first case to award daily civil penalties under §106(b) of CERCLA.

The two defendants in this action, Edward LeCarreaux and Lightman Drum Company, were among about 40 PRPs which received unilateral administrative orders in late 1984 and early 1985, requiring the performance of a removal action at the Duane Marine Superfund Site in Perth Amboy, NJ, which was operated as a waste storage, treatment and disposal operation during the 1970's. All the remaining PRPs complied with the orders and carried out the removal, valued at several million dollars. The two defendants neither complied nor participated with the other PRPs in carrying out the required work.

EPA sued the two defendants for past costs, daily civil penalties, and treble damages. In July 1991, the court granted the government's Motion for Summary Judgment as to the defendant's liability. In November 1991 a hearing was held on the amount of costs, penalties and damages.

The court awarded the government:

- its full response costs ($346,646.28, incurred in connection with overseeing the PRPs' removal work, and in prosecuting the case);

- $1,998,336 in penalties and damages against LeCarreaux, the owner and operator of the Duane Marine facility (of this amount, $228,336.81 is earmarked as treble damages); and

- $1,886,336 in penalties and damages against Lightman Drum, a transporter, which brought hazardous substances to the facility (of this amount, $228,326.81 is for treble damages).

U.S. v. Orban Industries, Inc. and Kurt Orban Company, Inc., (W.D.N.Y.) Madison Wire Superfund Site, West Seneca, Buffalo, New York: The District Court for the Western District of New York rendered a split decision in August under CERCLA, awarding the government costs and treble damages under §107, but declining to impose penalties under §106(b). This decision was for the Madison Wire Superfund Site. The government subsequently filed a motion under Fed. R. Civ. Pro. 52(b) to amend the judgment denying §106(b) penalties.

In the court's decision, a default judgment was entered against Orban Industries, Inc. (OII) and Kurt Orban Company, Inc. (KOCI) for a $500,000 in response costs incurred at the site. OII is a wholly owned subsidiary of KOCI. The court also awarded $1.1 million in treble damages against OII for failure to comply with a §106 unilateral removal order. However, the court did not award penalties under §106(b) for failure to comply with the order.

Section 106(b) provides that penalties may be imposed if a party "willfully violates, or fails or refuses" to comply with an order. The government contends that the court's interpretation that a §106 penalty can only be imposed when a party acts willfully ignores the "fails or refuses" language in the section.

In 1987 Region II issued a unilateral administrative order to OII and Kurt Orban ordering the removal of hazardous substances, such as waste acids, which were left at the Site in drums, tanks, and process equipment after OII abandoned it. Kurt Orban, the majority shareholder of OII and president of both corporations, asserted that due to the lack of resources following the voluntary assignment and sale of KOCI's assets neither he nor OII could comply with EPA's order. EPA completed the removal action. In 1990 the government initiated a cost recovery action against Kurt Orban, OII, KOCI, Robert Lawlor, and Atlantic Wire Company, Inc. and also commenced actions for penalties and punitive damages against Kurt Orban and OII.

A consent decree was entered in March, 1992 settling EPA's cost recovery claim against Kurt Orban, Robert Lawlor, and Atlantic Wire Company, Inc. for $185,000, and also settling EPA's penalty claim against Kurt Orban for $30,000.

Bankruptcy Cases

Bunker Hill Superfund Site, Shoshone County, Idaho: This action is unprecedented in Region X both for its strategy and for the amount recovered, and moves the CERCLA cleanup strategy several steps closer to the success contemplated by the Region's Coeur d'Alene Initiative.

When the Bunker Hill Mining Company, an owner/operator at the Bunker Hill site in Shoshone County, Idaho, filed for bankruptcy in January 1991, EPA realized its rights to the company's assets were in danger, and moved quickly to prevent a similar situation with a related entity, the Bunker Limited Partnership (BLP). First, the agency filed CERCLA liens on BLP and all of its subsidiaries' property within the boundaries of the 21-acre site. This not only prevented the company from selling its assets, but also provided EPA with priority over BLP's unsecured creditors once BLP filed for bankruptcy (which it did that June). Second, EPA issued a CERCLA §106 Unilateral Administrative Order (UAO) to BLP in September 1991, specifying cleanup actions which BLP was now required to undertake. As a result, EPA now had a priority claim which BLP was required to fund, and the Bankruptcy Court ordered the transfer of $2 million into an EPA Remediation Account.

After obtaining the $2 million, EPA continued to seek administrative priority for the majority of BLP's remaining assets, valued at over $10 million. Despite the claims of other parties, EPA prevailed and on July 13, 1992, the Bankruptcy Court ordered that at least $13 million of BLP's assets be set aside for cleanup.

Chemical Sales Company (CSC) Superfund Site, and related Sites located in Commerce City, Denver, Adams and Denver Counties, Colorado: The Chemical Sales Company (CSC) Superfund Site, and related Sites are located in Commerce City, Denver, Adams and Denver Counties, Colorado. The site soils and ground water are contaminated with volatile organic chemicals, resulting from various leaks and spills from the CSC tank farm, rail cars during unloading operations, and spills resulting during transfer of chemicals from bulk storage to containerized storage.

The Chemical Sales Company (CSC), one of the ten PRPs, is a Respondent regarding several matters resulting from a common set of operative facts. First, CSC, on September 9, 1989, signed an Administrative Order on Consent (AOC) to perform the RI/FS for the first operable unit (OU1). The AOC directed payment of all EPA oversight costs. EPA received $91,126 as a first installment payment. CSC was billed for $108,415 for the remainder of EPA's oversight costs. This amount has never been reimbursed. CSC is also a Respondent to a UAO issued on February 26, 1992, pursuant to CERCLA §106 at OU1 of the CSC Superfund Site. CSC is liable for a civil penalty of $7,425 pursuant to a Consent Order and Consent Agreement entered into by CSC for a violation of CERCLA §103. This penalty assessment resulted from CSC's failure to immediately report a release of methanol from its facility which was in excess of its reportable quantity to the National Response Center. And lastly, CSC is also potentially liable for past costs incurred as part of EPA Off-Post Rocky Mountain Arsenal OU1 (RMA-OU1) and costs incurred under the site name "South Adams County", both of which are physically located in CSC OU2.

On February 21, 1992, CSC filed a petition for reorganization pursuant to Chapter 11 of the Bankruptcy Code, 11 U.S.C. 101 et seq. in the U.S. Bankruptcy Court. On June 9, 1992, EPA completed a Bankruptcy Litigation Report requesting that the Department of Justice file a Proof of Claim. Because of the above situation, delays occurred in the work schedule specified in the February 1992 UAO. On August 31, 1992, a CERCLA § 107 cost recovery referral was sent to DOJ. EPA seeks to recover $16,085,033.41 in removal and remedial action costs as well as all penalties associated with the EPCRA violation, and the AOC, and the UAO. This action will be filed in the Federal District Court for the District of Colorado.

This case supports the Headquarters/Regional priorities in the use of enforcement tools to resolve violations in the most effective and efficient way.

Harvard Industries Bankruptcy Action, Chapter 11, (N.D. Del.): On June 22, 1992, two consent orders settling the claims of the United States were lodged in the above-referenced case in the U.S. Bankruptcy Court for the District of Delaware with Harvard Industries of Farmington, NJ, a direct subsidiary of F E L Corporation (formerly Frequency Engineering Laboratories) of Farmington, NJ. Harvard Industries manufactures automotive accessories, hose products, specialty fasteners, armaments, and electronic products. The settlement involved four NPL sites, the Alsco-Anaconda Site in Region V, the Kramer Site in Region VII, the Vega Alta Site in Region II, and the Keefe Site in Region I. The total amount of this settlement to be paid in cash and pursuant to plan dollars is $769,729. EPA had filed a multi-regional proof of claim on August 29, 1991.

In re: Insilco Corporation and Subsidiaries, (W.D. Tex.): This is a large, nationwide bankruptcy action, potentially settling the United States' claims against Insilco at approximately 264 sites located throughout the country. On January 13, 1991, Insilco Corporation and thirteen of its subsidiaries (hereinafter "Insilco") filed a voluntary petition for reorganization pursuant to Chapter 11 of the bankruptcy Code, 11 U.S.C. §1101 et seq. in the United States Bankruptcy Court for the Western District of Texas in San Antonio.

On August 20, 1991 and January 13, 1992, the United States, on behalf of EPA and the Department of Interior (DOI), filed proofs of claim alleging Insilco and its subsidiaries are jointly and severally liable to the United States under the CERCLA for response costs incurred in connection with a number of sites across the nation. Approximately 264 additional sites, broken down into four categories, have been identified by Insilco and will be dealt with in the proposed agreement. Fifteen sites are either on the NPL or sites at which EPA has performed removal activities. Thirteen others, most unknown to EPA, are currently believed by Insilco to be undergoing some form of remediation as State-lead sites. At three other State-lead sites, remediation is underway by other parties. Insilco may have additional liability at 233 other sites as a result of Insilco's past ownership and/or operation of such sites or Insilco's arranging for disposal of hazardous wastes at such sites.

In re: National Gypsum: In a CERCLA bankruptcy case the 5th Circuit held that when there was more than one responsible debtor, they each may be found jointly and severally liable. The court issued its decision in February 1992; the case has many implications for similar actions. The site, comprised of a main site and three satellite sites with asbestos contamination, was an asbestos manufacturing plant. The main site is located in Millington, in Morris County, NJ, and the satellites are located in Meyersville and in the Great Swamp areas of Passaic and Harding Townships. Gypsum filed for Chapter 11 reorganization in 1990.

The holdings in the decision are:

- Joint and several liability applies in bankruptcy cases. Where there is more than one debtor, each debtor may be held jointly and severally liable under CERCLA.

- The CERCLA §113(h) ban on pre-enforcement review applies in bankruptcy cases. The exceptions to this bar are activated when the U.S. files a proof of claim. Response costs incurred post-petition, resulting from pre-petition conduct, may be entitled to priority for administrative expenses if the costs were required by conditions that posed "imminent and identifiable" harm to the environment and public health.

- Response costs incurred by the U.S. at sites presently owned by the debtor are entitled to priority for administrative expenses, if the "costs were necessary to remedy conditions posing an imminent and identifiable threat to public health or safety."

In re: Uniroyal Bankruptcy, (N.D. Ind.): On September 29, 1992, an agreement to settle EPA's and DOI's claims against the Debtors in a Chapter 11 bankruptcy was entered in the Bankruptcy Court for the Northern District of Indiana, South Bend Division. The debtors, five companies which were former operating divisions of Uniroyal, Inc. and are currently held by the Jesup Group, Inc., filed for Chapter 11 reorganization on November 20, 1991. The companies manufacture plastics, rubber-based products, and adhesives and sealants. EPA's Proof of Claim covered claims under CERCLA at nine sites located in Regions I and V, and for one Clean Air Act civil penalty claim at a facility in Region

V. After negotiations between EPA, DOJ, the Jesup Group, and Jesup's outside counsel, 11 other sites, located in Regions I, II, and V, were included in the settlement agreement.

Under the settlement in this case, EPA, along with the Department of the Interior (DOI) and the States of Wisconsin and Indiana, will receive distributions under the Reorganization Plan, of allowed claims totaling $27,290,419, representing approximately 15% of the reorganized Uniroyal stock. A total of $18,885,104 will go to EPA directly, $4,022,315 to PRP Trust Funds at NPL sites where PRPs are doing the remedial work, $229,000 to DOI, $154,00 to Indiana, and $4,351,000 to Wisconsin. All these claims will be treated like those of the other general unsecured creditors, and will be satisfied by distribution of stock of the reorganized companies, which have current estimated values of between 20 to 40 cents on the dollar.

Toxic Substances Control Act (TSCA) Enforcement

TSCA enforcement embraces the basic tenets of pollution prevention and data quality. TSCA's regulation of existing and new chemical substances encourages the manufacture and use of substances that pose only reasonable effects on human health and the environment. In FY 1992, TSCA enforcement actions emphasized compliance with the premanufacture notification requirements for new chemical review, the reporting and retention of information under §8, compliance with the AHERA rule, and the proper use, storage, and disposal of PCBs. Many settlements resolving TSCA administrative enforcement actions are notable for their inclusion of supplemental environmental projects incorporating pollution prevention and environmental auditing provisions.

Allied Colloids, Inc.: On September 29, 1992, EPA signed a Consent Order assessing a penalty of $900,000, against Allied Colloids, Inc. ("ACI") for violations of §§5 and 13 of TSCA. Penalties were assessed for failure to submit proper notices and documentation. In addition, ACI must conduct an audit of its past compliance with TSCA, report additional violations discovered during the audit, and pay stipulated penalties for these violations up to a cap of $1 million.

ALM Corp. v. EPA: Although this is a defensive case rather than an enforcement action, a September, 1992, decision by the U.S. Court of Appeals for the Third Circuit has important enforcement implications. The decision affirms EPA's assessment of fines against ALM Corp. of New Jersey for violations of TSCA §13 import certification requirements. The decision is the first court test of these requirements. It affirms EPA's requirements of self-policing by importers, upholds EPA's authority to enforce the Customs Service regulations that require certification, and subjects importers which violate certification requirements to civil penalties. ALM filed petition for certiorari with the U.S. Supreme Court, which was denied.

Bryn Mawr College: Region III signed a Consent Agreement and Consent Order ("CACO") memorializing a settlement with Bryn Mawr College for violations of TSCA and the PCB Rule. The CACO provided for a civil penalty of $126,240 and takes into account a completed supplemental environmental project in which the college removed or retrofilled all of its PCB transformers before the end of their useful life. The college documented expenditures for the project totaling nearly $600,000.

Cargill Inc., Chemical Products Division: On March 18, 1992, the Regional Administrator for EPA Region IV executed a Consent Order in In the Matter of Cargill Inc., Chemical Products Division. The Regional Administrator for EPA Region V had executed a companion Consent Order in In the Matter of Cargill Inc., Chemical Products Division, on February 19, 1992. This concluded the first and only multi-regional settlement of a TSCA administrative enforcement action.

Region V issued an administrative Complaint against Cargill on March 27, 1990. After a Region IV TSCA inspector arrived at Cargill's Georgia facility, Cargill approached EPA about the possibility of a single, national settlement. EPA negotiated a national settlement covering five EPA Regions. The Consent Agreement for these two cases provides that Cargill will pay a civil penalty of $121,050, or 90% of the proposed penalties in both cases, and will conduct a TSCA §§4, 5, 8, 12, and 13 Compliance Audit covering seven Cargill research and manufacturing facilities in Minnesota, Georgia, Illinois,

California, and Texas. Cargill will pay stipulated penalties for violations identified during the audit, up to a limit of $1,200,000. Cargill may perform some or all of eleven supplemental enforcement projects described in the CACO at Cargill Resin Products Division facilities across the country in exchange for credit against stipulated penalties in excess of $250,000.

Champion Technologies: On April 22, 1992, Environmental Appeals Board Judge Edward E. Reich signed a Consent Order which required an administrative civil penalty of $50,644 for violations of TSCA. The Agency's original civil administrative Complaint charged Champion with violations of the TSCA §5 Premanufacture Notification (PMN) rule, and also with violations of the TSCA Inventory Update Rule (IUR), which requires covered persons to report to EPA chemicals manufactured in excess of 10,000 pounds during the company's latest complete corporate fiscal year prior to August 25, 1986. Subsequent to issuance of the Complaint, Champion voluntarily disclosed to EPA a TSCA §5 Notice of Commencement violation, and the Agency also learned of an additional IUR violation. EPA chose to amend the Complaint after Champion submitted affidavits showing that it had inaccurately described to the EPA inspector the chemical structure of the substance for which the PMN violation was alleged and that the substance was in fact on the TSCA Inventory. The amended Complaint removed the PMN count and added a new IUR count.

In the Matter of The Eastern Company: On March 25, 1992, EPA reached a settlement with The Eastern Company, which operates a facility in Naugatuck, Connecticut where it manufactures malleable and stainless steel castings. EPA's administrative complaint alleged that the company: 1) failed to mark with an appropriate label a PCB Transformer; 2) failed to mark with appropriate labels the means of access to two PCB Transformers; 3) failed to register its PCB Transformers with the local fire response personnel in accordance with the federal regulations; and 4) failed to conduct quarterly leak inspections, and maintain records of such inspections, for two PCB Transformers. All the violations of EPA's PCB regulations occurred at the company's Naugatuck facility.

The settlement agreement required the company to pay a $39,100 penalty and to undertake a supplemental environmental project involving the removal and disposal of PCB capacitors and PCB transformers from its facility, at an approximate cost to the company of $134,000. This project was beneficial to the environment and was not required by local, state, or federal law. The agreement contained provisions requiring the company to pay a proportional amount to the U.S. Treasury in the event that the cost of the environmental project did not reach at least $134,000. The company has corrected the violations alleged in the complaint.

In the Matter of the City of Garland, Texas: A TSCA PCB administrative complaint was issued against the City of Garland in 1989. Settlement included a supplemental environmental project requiring the city to implement a PCB identification program which identifies through sampling and laboratory testing and label inspection all transformers that contain PCBs at 2 ppm or greater. This information is required to be kept ion a computer database. The compliance order required expenditures of $500,000 and a 10% case penalty of $14,200. Quarterly status reports are also required to be submitted to EPA, to include actions taken during the previous quarter toward achieving compliance with the PCB identification program and expenditures associated with this identification program. The City of Garland submitted its first quarterly status report in September 1992. The city has currently expended $42,700. The city has until 1997 to complete the project.

In re: Goetze Corporation of America: A February 6, 1992, consent agreement requires Goetze Corporation of America to dispose of three PCB transformers at its Sparta, Michigan, facility and to replace the transformers with non-PCB transformers. Goetze Corporation also agreed to pay a penalty of $11,234. This supplemental enforcement project/PCB disposal plan was completed at a cost of $122,297.

Goetze Corporation is a Delaware Corporation with a place of business at 252 Gardner Street, Sparta, Michigan. The complaint, initiated pursuant to §16(a) of TSCA, was filed on October 6, 1990, and alleged in six counts that Goetze Corporation had stored combustible materials within a PCB transformer enclosure; had failed to mark the means of access to its three PCB

transformers; and had failed to properly dispose of PCBs.

In re: Hall-Kimbrell: During FY 1992, Region V settled its asbestos-in-schools complaint against Hall-Kimbrell. This was the Agency's largest case issued under TSCA's AHERA requirements and involved alleged violations at 160 schools within the Archdiocese of Detroit. Specifically, in the complaint, Region V had alleged that management plans developed by Hall-Kimbrell did not contain sufficient information to allow schools to properly manage their asbestos-containing materials.

As a result of the settlement, Hall-Kimbrell revised 160 management plans (MPs) within the Archdiocese of Detroit, 188 MPs for Local Education Agencies within Michigan, approximately 600 MPs it had prepared for schools within Illinois, and approximately 50 other MPs it had prepared for schools within Region V. Hall-Kimbrell will also correct, at no cost to the school, all identified deficiencies in any MP it had prepared which constitute AHERA violations in the event that a school identifies the violation and requests correction. The rework has already cost Hall-Kimbrell at least $2.2 million, and even though they have neither admitted or denied liability, they have also agreed to pay a settlement of $160,000

U.S. v. Huisch Detergent, Incorporated: A coordinated multi-media inspection under TSCA §§5 & 8 and EPCRA §313 was conducted at Huisch Detergent located in Salt Lake City, Utah. Violations of both statues were discovered. Huisch Detergent agreed to a combined TSCA/EPCRA cash settlement of $30,940 and a SEP of $400,000. The SEP will consist of the construction of an enclosed chlorine delivery system and ancillary systems such as a scrubber, control, and ventilation system. The SEP will minimize the possibility of a chlorine release into the surrounding environment.

Jetco Chemicals, Inc.: In this TSCA administrative action, failure by Jetco's Corsicana, Texas facility to submit a Preliminary Assessment Information Rule (PAIR) Report was alleged. PAIR reporting is required by §8(a) of TSCA, and involves basic production/importation volume, use, and exposure information. The Consent Agreement and Consent Order settling this case required payment of $19,500 penalty, establishment of a revised TSCA Compliance Manual, additional training for Jetco employees, and changed company operating procedures to ensure TSCA compliance, especially with regard to PAIR and other TSCA §8 reporting requirements.

Kaneka Texas Corporation: This TSCA administrative action is one of the few cases involving alleged violations of the requirements for the research and development (R&D) exemption to TSCA premanufacture notification (PMN) regulations. The settlement included a penalty payment of $17,000, and development and implementation of a comprehensive training program and a standard operating procedure for proper adherence to TSCA for all chemicals handled by Kaneka (with specific emphasis on TSCA import certifications and compliance with the requirements for R&D exemption from PMN requirements). The company also agreed to relocate and operate its drum crushing system away from a nearby stream to provide enhanced containment of hazardous material residues, and to construct and operate a new storage facility for drummed treatment chemicals to greatly reduce or eliminate the possibility of an environmental release. These supplemental environmental projects cost approximately $20,500, and were completed in October 1992.

In the Matter of Lafayette Utilities, Lafayette, Louisiana: A TSCA PCB administrative complaint was issued against Lafayette Utilities in 1991. Settlement included a supplemental environmental project requiring the testing of 8% of the utility's transformers within one year of the date of the compliance order. The compliance order required expenditures of $94,200 and a 10% cash penalty of $3,140. Monthly status reports are also required to be submitted to EPA, to include sampling and analytical results showing PCB concentrations of oil in transformers; total number of transformers tested during the calendar month; and actual cost documentation, contracts, invoices, and related correspondence with the status reports. Lafayette Utilities had expended approximately $162,838 and tested approximately 2348 transformers by June 1992.

Lindau Chemicals, Inc.: On June 30, 1992, Environmental Appeals Board signed a Consent Order settling an administrative civil penalty

action against this chemical manufacturer. The Agency had charged Lindau Chemicals, Inc. with two violations of the Inventory Update Rule (IUR). Lindau had failed to report two chemical substances manufactured in excess of 10,000 pounds during its latest complete corporate fiscal year before August 25, 1986, as required by the IUR. Subsequent to issuance of the Complaint, Lindau voluntarily disclosed that it had also failed to report three chemical substances manufactured during the company's last complete fiscal year before August 25, 1990, in violation of the IUR recurring reporting provisions. Lindau agreed to pay a $51,000 penalty to settle all five of the violations.

McGhan NuSil Corporation: EPA charged Mcghan Nusil Corp., a subsidiary of Union Carbide, with illegal manufacture of chemicals under TSCA §5. EPA filed an administrative complaint seeking an adjusted civil penalty of $384,000. Pursuant to a recent consent agreement, McGhan NuSil agreed to pay $18[illegible] 393 as the gravity-based penalty. This penalty is due within 30 days of a signed consent order.

Monsanto: This administrative enforcement action was brought for violation of TSCA §8(e). Monsanto failed to report the results of a carcinogenicity study of Santogard PVI within 15 days as required by §8(e). Pursuant to a consent agreement, Monsanto agreed to pay a fine of $198,000 and to conduct an environmental audit on its studies of developmental toxicity effects, reproductive effects, and carcinogenicity. Post audit, the company paid $648,000 for the violations found in the audit.

Sika Corporation: Late last year the Agency issued an administrative complaint against Sika Corporation for the illegal manufacture (import) of chemicals into the United States. The complaint sought an adjusted proposed penalty of over $6.5 million. This is the highest penalty ever sought under TSCA §5(a) which requires chemical manufacturers to notify the Administrator at least 90 days prior to manufacturing a new chemical. Pursuant to an executed settlement agreement Sika has agreed to pay a cash penalty of $1,120,700.

3M Company: In the last opinion from EPA's Chief Judicial Officer (CJO), the CJO ruled that the general five-year federal statute of limitations does not apply to the assessment of civil penalties under TSCA. (The Environmental Appeals Board now handles appeals that were formerly heard by the chief judicial officer.) The ruling resulted from EPA's appeal of a TSCA administrative case involving the Minnesota Mining and Manufacturing (3M) Company, based in Minneapolis, Minnesota.

In 1988, EPA assessed a $1.3 million fine against 3M for importing two new chemical substances between 1980 and 1986 without submitting a premanufacture (PMN) as required by §5 of TSCA. After a Hearing, the Administrative Law Judge (ALJ) reduced the penalty to $104,700. EPA appealed the penalty reduction on the ground that the ALJ had not properly applied EPA's TSCA §5 enforcement response policy. During the appeal, 3M argued that the ALJ erred in narrowly construing the general statute of limitations as not applicable to an administrative action for the assessment of a civil penalty under TSCA.

In ruling on EPA's appeal, the CJO upheld reduction of the penalty and also ruled that held that EPA was not barred from filing charges for TSCA violations more than five years after an event had occurred because "Federal courts have held that the United States is not bound by statutes of limitation unless Congress clearly manifests such an intention. 3M has appealed this decision with respect to the statute of limitations to the United States Court of Appeals for the District of Columbia Circuit.

Texas Eastern: EPA is supervising the clean up of PCBs at 89 sites subject to a Consent Decree entered in October 1989, with Texas Eastern Gas Pipeline Company (Texas Eastern). The Consent Decree remains the most extensive settlement ever obtained by the Agency against a single company, requiring PCB cleanup estimated to exceed $750,000,000. The Consent Decree requires investigations at 89 compressor station sites, which includes: Remediation of 49 Class A-1 sites (heavily contaminated sites that require remediation), characterization of 27 A-2 sites (sites that are contaminated with PCBs at less than the PCB cleanup levels of 25/10 ppm), and 13 Class A-3 sites (sites where no PCBs are thought to be present).

To date, 12 A-1 sites have been remediated (six sites were remediated in 1991, six sites have been

remediated in 1992). In addition to the six sites remediated in 1992, Texas Eastern conducted limited remediation activities at one other site. Further, site characterization or sampling activities have been completed at the 30 Class A-1 sites, with six additional Class A-1 site characterizations being undertaken. Sampling has been completed at four of the 27 Class A-2 sites.

Under the decree, Texas Eastern is required to perform groundwater monitoring at the 76 Class A-1 and A-2 sites. To date, groundwater contamination, primarily PCBS and BTEX have been detected at 29 sites. Texas Eastern has, to date, installed 500 groundwater monitoring wells.

Tosoh (USA), Inc.: Chief Judicial Officer Ronald L. McCallum on January 30, 1992, signed a Consent Order requiring Tosoh (USA), Inc. to pay a $60,510 administrative civil penalty for several violations of TSCA. Specifically, Tosoh: failed to submit to EPA a Notice of Commencement after beginning manufacture or import of two new chemical substances, in violation of TSCA §5; imported for commercial purposes a covered chemical substance without submitting a Manufacturer's Report – Preliminary Assessment Information (PAIR), in violation of TSCA §8; and failed to provide written notification to customers to whom it distributed a research and development (R&D) substance that it was to be used only for R&D purposes, in violation of TSCA §5. In addition to paying the civil penalty, Tosoh agreed to notify each of its customers that the substances they received were for R&D purposes only.

University of Washington, Seattle, Washington: On January 6, 1992, the University of Washington was fined $52,488, for storage, marking, disposal, and use violations of the PCB regulations. (The penalty amount was affected by the fact that the University had voluntarily disclosed several of the violations prior to the inspection; accordingly, a portion of the penalty had been reduced consistent with EPA's TSCA Enforcement Response Policy.) In settling the complaint by the signing of a Consent Agreement and Consent Order, the University agreed to a cash penalty of $26,244, and received mitigation of the remaining balance of $26,244 by agreeing to spend at least $52,488 on the disposal of PCB equipment not required by regulation.

Chloranil Importers Cases

Sandoz Chemicals, Inc., Hoechst-Celanese Corp., ICI Americas Inc.: The unique coordination between enforcement and regulatory forces continued in FY 1992 in the chloranil cases. Preliminary risk assessments on chloranil by the Office of Pollution Prevention and Toxics indicated significant health risks resulting from dioxin contamination of chloranil. The fortunate coincidence of OE's ongoing enforcement actions against all chloranil importers created the opportunity to quickly achieve important risk reduction through settlement of these enforcement actions, rather than a protracted TSCA §6 rulemaking.

The Agency arranged settlements with each of the chloranil importers that would reduce the amount of dioxin imported into the United States. Under these settlements, the companies commit to stop importing chloranil or to import only chloranil containing less than 20 ppb dioxin. During FY 1992, OE satisfactorily settled cases with Sandoz Chemicals, Inc., Hoechst-Celanese Corp., and ICI Americas Inc. Together with A&D International, Inc. (settled in FY 1991) and Chugai Boyeki (America) Corp. (who has committed to the dioxin reduction, but not yet resolved all issues related to settling the enforcement case), all chloranil importers and manufacturers have significantly reduced dioxin contamination. OPPT is now in the process of ensuring that other companies do not import or manufacture chloranil with higher dioxin concentrations by issuing a Significant New Use Rule under TSCA §5.

Hoechst Celanese: On June 1, 1990 the Agency filed a civil administrative complaint against Hoechst Celanese for violating several provisions of TSCA in regard to the importation of the chemical substance chloranil. Based on preliminary data from testing in progress pursuant to the Dioxin/Furan test rule (40 CFR §766), the Agency has found that chloranil manufactured by certain processes can be contaminated with polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans. Among the violations alleged were that Hoechst Celanese failed to submit the test protocol in a timely manner and failed to ensure that the study submitted to the Agency pursuant to TSCA §4 complied with TSCA Good Laboratory Practices

(GLPS). The complaint proposed a penalty of $26,500. In addition to agreeing to pay a propose penalty of $15,300, Hoechst Celanese agreed to import only low dioxin chloranil.

Sandoz Chemical Corporation: On June 10, 1992, EPA entered into a Consent Agreement and Consent Order with Sandoz Chemicals Corporation of Charlotte, North Carolina, resolving alleged violations of TSCA §4. Specifically, EPA filed a civil administrative complaint in the amount of $39,750 against Sandoz in June of 1990, alleging violations of the Halogenated Dibenzo-p-dioxin/Dibenzofuran Test Rule (Test Rule) and violations of the TSCA Good Laboratory Practices Standards (GLPs). Sandoz imported the chemical substance chloranil, a chemical used in the manufacture of dyes and rubber, for which testing is required under the Test Rule and §4 of TSCA. The complaint charged Sandoz with late submission of a notice of intent to test, late submission of test protocols, late submission of test data, failure to test in accordance with the EPA approved protocol, failure to submit statements certifying that the tests adhered to the TSCA GLPs, failure to perform the test in accordance with the TSCA GLPs, and failure to submit additional required information upon detection of halogenated dibenzo-p-dioxins or dibenzofurans above the limit of quantification. The original complaint was amended in October of 1991 to add an additional day of violation, increasing the proposed penalties up to $87,000. The settlement called for a cash penalty of $32,521 and a commitment from Sandoz to import a lesser-contaminated form of chloranil in the future. EPA has negotiated similar agreements on a voluntary basis with other manufacturers and importers of chloranil not subject to enforcement actions, until such time as a Significant New Use Rule (SNUR) can be promulgated. This will allow EPA to gather detailed information on specific uses and exposures resulting from the import or manufacture of more contaminated chloranil and enable the Agency to control risk on a case-by-case basis.

Anti-Microbial Testing Initiative

EPA and FDA have embarked on a joint testing and enforcement initiative covering the anti-microbial industry. Following a GAO report "Pesticides, EPA Lacks Assurance They Work", the two Agencies negotiated a Memorandum of Understanding under which the FDA laboratory in Minnesota is conducting anti-microbial testing for EPA. FDA perform parallel tests for FDA on sterilant products classified for use on "medical devices." Based on risk reduction, test gluderaldehyde based sterilants were tested first, followed by hospital level disinfectants. Collections were done by states where the product is produced. (Information on production is submitted to the Agency annually under FIFRA Sec. 7.) EPA has issued two SSUROs pursuant to the testing and three civil complaints. In addition, follow up actions has included laboratory audits of the laboratories which generated the registration data for claims which were found to be false by the tests and meetings are being held with companies to change labels to delete unsubstantiated claims.

Airline Maintenance Facility Initiative

In addition to participating fully in the Region's multi-media enforcement program, the TSCA program also continued work on the Airline Maintenance Facility enforcement initiative it commenced the previous year. As part of this industry-specific enforcement initiative, complaints were issued against several airlines during FY 1991 for violations involving the use of PCBs in transformers and other electrical equipment at airports. FY 1992 follow-up included:

In the Matter of American Airlines, Inc.: An administrative complaint had been issued by Region II against this carrier which cited PCB infractions at its facility in JFK Airport in New York City. A Consent Agreement and Consent Order (CA/CO) was issued imposing a penalty of $112,700. The complaint cited 57 violations concerning 13 PCB transformers in six separate locations at American's facility. The violations included failure to maintain records of annual inspections and maintenance history, failure to prepare annual documents and to provide required protection against electrical faults.

In the Matter of British Airways, Ltd.: In March, 1992 Region II settled an administrative complaint against British Airways which concerned PCB violations at the carrier's cargo facility at JFK Airport in New York. The Consent Agreement and Consent Order (CA/CO) provides

for a penalty of $65,000. The complaint, issued in June 1991, cited failures to mark PCB transformers properly, to perform required quarterly inspections, and to prepare and maintain annual documents. The complaint was based on an EPA inspection done November 1990.

Emergency Planning and Community Right-to-Know Act (EPCRA) Enforcement

EPCRA establishes a structure at the state and local levels to assist communities in planning for chemical emergencies and requires facilities to provide information to EPA on various chemicals present in the community, which shall be made available to the public. Under §313 certain manufacturing facilities must provide EPA with annual data on the amounts of chemicals that they release into the environment, either routinely or as a result of accidents. In addition, facilities must report accidental releases of extremely hazardous substances" and CERCLA "hazardous substances" to state and local response officials, and report to state and local officials inventories of chemicals on their premises for which Material Safety Data sheets exist. FY 1991 enforcement efforts targeted nonreporters as well as late and incorrect reporters.

Ace Galvanizing, Seattle, Washington: Ace Galvanizing is a hot dip galvanizer which was inspected and found in violation of the Toxics Release Inventory for Failure to Report (6 counts). The facility was assessed a penalty of $32,300, of which $19,000 was payable in cash, with the remainder ($13,300) mitigated in consideration of the Respondent's expenditure of more than $168,000 for a Supplemental Environmental Project. This project provided a new sulfuric acid recovery system which reclaims and treats the acid used at the facility, thereby reducing the amount of acid required in the galvanizing process and reducing acid wastes.

In the Matter of Balzers: On October 23, 1991, Region I issued a consent agreement in which Balzers agreed to pay a $8,500 penalty to settle a administrative complaint for a violation of chemical emissions reporting requirements at its Hudson, New Hampshire facility. The complaint alleged that the company failed to report its emissions of freon-113 in calendar year 1987 in violation of §313 of EPCRA. At its facility, the company manufactures high technology vacuum equipment for film processing and cryogenic equipment for laboratory applications.

The company also agreed to undertake a supplemental environmental project in connection with settling the case, in which the company will make expenditures in excess of $56,475 to replace freon-based cleaning systems in its facilities in Hudson, New Hampshire and Fremont, California. Instead Balzers will use an aqueous-based system that will not result in emissions of toxic chemicals to the environment.

In the Matter of Belmont Metals, Inc.: In May of 1991, Region II had issued an administrative complaint against Belmont Metals of Brooklyn, New York. The company contested the complaint, contending that EPA's enforcement response policy is arbitrary and capricious. Chief Administrative Law Judge (ALJ) Henry B. Frazier granted EPA's motion for a partial accelerated decision against the Respondent. Judge Frazier found that Belmont violated §313 of EPCRA for failing to file Forms R for nine chemicals in the 1987 and 1988 reporting years. Frazier also denied Belmont's motions to dismiss and for discovery. Later, one day before the penalty issue was to be tried, the parties reached a settlement in which Belmont agreed to pay a penalty of $90,000.

Belmont had contended that EPA's enforcement response policy was arbitrary and capricious. It claimed that EPA arbitrarily excluded it from the less punitive enforcement actions taken under EPA's June 1, 1991, Late Reporting Enforcement Initiative. Judge Frazier rejected these arguments, ruling that EPA's decision to prosecute and enforce or not is one of absolute discretion for the agency. Additionally, he held that the factors which determine the appropriate penalties are not relevant in deciding whether Belmont violated EPCRA's reporting requirements.

In the Matter of Bethlehem Steel Corp.: This action, initiated by Region II, was the nation's first EPCRA §313 data quality case issued and settled. In addition to four non-reporting violations, the complaint alleged data quality violations (failure to report a reasonable estimate) for three chemicals. The case was

settled for a penalty of $45,000 and the company's agreement to file a corrected Form R for one chemical.

In the Matter of Dairyman's Cooperative Creamery Association: On July 13, 1992, EPA signed a CAFO with Dairyman's Cooperative Creamery Association ("Dairyman's") to settle violations of §313 of EPCRA. The CAFO contains significant supplemental environmental projects worth more than $500,000. These projects include: 1) testing and installation of equipment to remove nitric and phosphoric acid from a liquid waste stream; 2) installation of a computer controlled system to increase the efficiency of cleaning milk evaporation equipment, thus reducing of the amount of nitric and phosphoric acid used during the cleaning process; and 3) installation of reverse osmosis, ultraviolet light, and other equipment to treat milk evaporator condensate, thus providing potable water and reducing the amount of chlorine used at the facility.

The CAFO also requires Dairyman's to conduct a one day seminar concerning the requirements of §313 of EPCRA for other dairy processors and to pay a penalty of $30,000.

In the Matter of Eyelematic Manufacturing Company, Inc.: On February 25, 1992, Region I issued a consent agreement in which Eyelematic Manufacturing Company, Inc. agreed to pay a $44,250 penalty to settle an administrative complaint for violations of chemical emissions reporting requirements at its Watertown, Connecticut facility. EPA's complaint alleged that the company failed to report its emissions of dichloromethane, copper, and trichloroethylene in calendar year 1987 in violation of §313 of EPCRA. At its facility, the company manufactures metal products that are produced by deep-drawing sheet metal in specially tooled eyelet machines.

In addition, as part of the settlement, Eyelematic has undertaken a supplemental environmental project that protects the environment and public health and is beyond the scope of existing law. The company has installed an on-site waste coolant recycling and recovery system which reduced the amount of waste oil and water-based coolants generated by the facility by at least 50% of its former levels, from generation of 92,000 gallons per year to not more than 26,000 gallons per year. The cost of the project was $91,000.

In re: Kunkle Foundry Company, Inc.: On June 17, 1992, Region V signed a CACO resolving alleged violations of EPCRA. The 1991 administrative complaint alleged that Kunkle Foundry failed to submit Toxic Chemical Release Inventory Reporting Forms for copper and lead for the calendar years 1987 and 1988. The CACO requires Kunkle to install equipment to add portland cement to lead-contaminated foundry sand in order to limit the production of leachate. Kunkle will dispose of approximately 2,000 pounds of sand containing approximately 200 pounds of lead annually. The estimated cost of this supplemental environmental project (SEP) is $175,000. In addition, Kunkle will pay a civil penalty of $4,400, plus an additional one dollar for each $5.50 of the $175,000 not spent on the equipment.

In the Matter of Madico, Inc.: On March 20, 1992, Region I issued a consent agreement in which Madico, Inc. of Woburn, Massachusetts agreed to pay a $30,000 penalty and undertake a supplemental environmental project that will reduce its use of toxic chemicals to settle an administrative complaint for violations of chemical emissions reporting requirements under EPCRA §313. The complaint alleged that the company failed to report its emissions of toluene and methyl ethyl ketone, two common industrial solvents, in calendar year 1987. Madico owns and operates a window film and fabric-coating facility in Woburn.

In addition to paying the penalty, by December 31, 1992, Madico will have developed a new formula for its scratch-resistant coating and have redesigned its coating process to reduce its use of toluene by 90%, and of methyl ethyl ketone by 50%.

In re: Midwest Sintered Products Corp.: On March 4, 1992, Region V signed a CACO resolving alleged violations of EPCRA. The CACO requires Midwest Sintered to pay a fine of $30,550. In addition, Midwest Sintered has or will complete the following supplemental environmental projects SEPs: 1) implement a blended hydrogen/nitrogen sintering atmosphere system, thereby eliminating the use and storage of anhydrous ammonia; 2) decontaminate a 10,000 gallon anhydrous ammonia storage tank, replace

it with a 1,000 gallon tank for a period of one year, and then decontaminate and eliminate the 1,000 gallon tank; 3) eliminate a trichlorethylene vapor degreaser; 4) install a closed loop cooling system for non-contact furnace water; and 5) complete an environmental audit of its facility. Midwest Sintered has agreed to complete the projects at a cost of more than $78,000. The implementation of these projects will result in the elimination of use and storage of anhydrous ammonia and elimination of use of trichloroethylene vapor degreaser.

EPA's action in this matter began on September 26, 1989, when Region V issued an administrative complaint against Midwest Sintered alleging that it had failed to submit Toxic Chemical Release Inventory Reporting Forms for copper, chromium, trichlorethylene, methanol, and ammonia, respectively, for calendar year 1987. Midwest Sintered admitted violations for copper, chromium, trichlorethylene, and ammonia. With respect to methanol, Midwest Sintered provided information which demonstrated that it had processed an amount below the 75,000 pound processing reporting threshold. During settlement discussions, Midwest Sintered completed an environmental audit to develop a SEPs proposal.

In re: Mineral Met: On April 24, 1992, Region V signed a CAFO settling the Region's administrative action against Mineral Met, Inc.'s Cleveland, Ohio facility. Mineral Met has agreed to pay a penalty of $130,000, which is the largest settlement amount in the EPCRA §302-312/CERCLA §103 program to date.

On October 19, 1990, Region V filed an administrative complaint against Mineral Met for EPCRA §311-312 violations. The complaint alleged late reporting of 22 hazardous chemicals stored above the threshold planning quantity of 10,000 lbs. and late submission of Emergency and Hazardous Chemical Inventory Forms (Tier forms) to the State Emergency Planning Commission, Local Emergency Planning Committee, and local fire department for 1987 and 1988. In response to the complaint, Mineral Met argued that it did not have to report certain of the substances. The Region reviewed consultant and accountant reports and, in some cases, accepted Mineral Met's claims. However, Mineral Met incurred substantial costs in providing this information which, in addition to the penalty and attorney's fees, should deter it from, in its own words, having "some [employee] who doesn't know anything type up a list" in order to satisfy EPCRA statutory requirements in the future.

U.S. v. Nephi Rubber Company: Nephi Rubber Company (NRC) makes specialty rubber hoses for the gas and oil industry, hydraulic hoses and many other forms of specialty hoses. An EPCRA inspection revealed a number of violations of EPCRA. The inspection also helped identify a number of possible multi-media violations in air, water, and discharge to land. EPA, Region VIII's Air, Water, and Waste Management Divisions were notified and they in turn notified the State of Utah. A joint Utah and EPA inspection resulted in joint complaints being issued (State of Utah, EPCRA §§ 311, 312, and 313, and RCRA).

Complications developed when a financial review discovered that NRC was in Chapter 11 bankruptcy. Because the company had declared bankruptcy, EPA faced the prospect of not receiving any fine. It was jointly decided with the State of Utah to minimize the cash fine and maximize SEP. The company agreed to cooperate. Based upon discussions within the Region and with the State of Utah, a Pollution Prevention Grant was awarded. The SEP/Pollution Prevention Grant alternative provided a win-win situation and will help make NRC a company that is environmentally acceptable, environmentally benefit the community of Nephi, Utah, enhance the State of Utah's environmental activities, and settle EPA's complaint against NRC.

In the Matter of Stop & Shop Supermarket Company: On September 22, 1992, Region I issued a consent agreement in which the Stop & Shop Supermarket Company of Braintree, Massachusetts agreed to pay a $25,323.25 penalty to settle an administrative complaint for violations of EPCRA reporting requirements at its facility in Readville, Massachusetts. In addition, the company has agreed to donate $21,310.75 worth of computer and other emergency response equipment to the Local Emergency Planning Committees (LEPCs) of the municipalities of Boston and Dedham in connection with the settlement of the action. The computer equipment will assist the LEPCs in tracking and storing information about the

identity and location of hazardous chemicals within the LEPC districts, and the other equipment will enhance the LEPCs' existing emergency response information systems by providing dedicated telecommunication links at chemical release incidents.

The violations were discovered during an inspection conducted as a result of an incident notification report made by the facility to the National Response Center (NRC). The company was cited under CERCLA and EPCRA for its failure to immediately notify the NRC, the State Emergency Response Commission (SERC) of the Commonwealth of Massachusetts, and the LEPC of a release of the extremely hazardous substance sodium hydroxide from the company's facility on July 9, 1990. In addition, EPA alleged that the company failed to provide a written follow-up report of the release to the SERC and the LEPC or to file a material safety data sheet for ammonia or a list of chemicals including ammonia or hazardous chemical inventory forms with the LEPC, SERC, and local fire department, as required by law.

Federal Insecticide, Fungicide, & Rodenticide Act (FIFRA) Enforcement

EPA regulates the use of pesticides in the United States under the authority of FIFRA by requiring that all pesticides sold and used in the United States, including imported products, be registered with EPA. FIFRA provides pre-market clearance of pesticides and post-market surveillance of pesticides and pesticidal devices to prevent unreasonable adverse effects upon human health or the environment. Under the statute, States have primary enforcement responsibility for pesticide use violations. FY 1991 enforcement efforts focused on violations of the import-export requirements, good laboratory practices requirements, product mislabeling, and sale of unregistered pesticides.

In re: Bell Laboratories: On March 25, 1992, a final administrative Consent Agreement and Consent Order (CACO) was issued to Bell Laboratories, Inc. of Madison, Wisconsin, thereby resolving numerous alleged violations of FIFRA. The CACO requires Bell to pay a fine of $100,000 and terminates a Stop Sale Order issued to the company pursuant to §13(a) of FIFRA. In addition, Bell has agreed to cease production, distribution and sale of its unregistered products, except under specific conditions identified in the CACO, as well as to amend its 1991 annual production report to reflect actual and accurate production information regarding its registered pesticides. As a result of this enforcement action, the company has submitted registration applications, for all unregistered products identified in the complaint.

Bell Laboratories, Inc. produces and distributes rodenticides and pesticides. On February 28, 1992, EPA had issued an administrative complaint alleging 31 violations of FIFRA. The violations include violations of a cancellation order, violations of regulations prohibiting the sale or distribution of unregistered pesticides, violations of regulations requiring the filing of product information, selling or distributing a misbranded pesticide, and violations of distributing or selling adulterated pesticides. In addition, on March 4, 1992, Region V conducted an inspection of Bell's facility at which the EPA issued to the company a Stop Sale, Use or Removal Order which ordered Bell to stop distributing or selling the products identified in the complaint (35 tons of rodenticides).

CNK Dispositions Corporation and Transbas, Inc.: The Agency settled two civil administrative enforcement actions alleging FIFRA violations in connection with pesticide exports to North and Central America. CNK Dispositions Corporation (a subsidiary of Crompton and Knowles Corporation) was charged with failure to provide required label information in both English and the language of the importing country, and for errors in the annual shipment records which the company submitted to EPA. In a separate action, the Agency charged Transbas, Inc., with failure to obtain a written statement from a foreign purchaser acknowledging that the pesticide is not registered for use in the United States and cannot be sold in the United States, and for failure to label unregistered pesticides intended for export "Not Registered for Use in the United States." The respondents claimed the identities of the foreign countries involved as confidential business information.

The Chief Judicial Officer (predecessor to the Environmental Appeals Board) executed a consent order on February 3, 1992, settling the Transbas case for a civil penalty of $7,200. The

Environmental Appeals Board executed a consent order on May 5, 1992, settling the CNK Dispositions case for a civil penalty of $17,000.

J. Taggares Co., Inc., Othello, Washington: The P. J. Taggares Co., Inc., has agreed to pay a $300,000 penalty to settle a FIFRA administrative complaint. The company has also agreed to develop an internal pesticide safety and training plan for its employees. P. J. Taggares Co. owns a hay cubing facility in Othello, Washington. During 1990, it was the practice of this facility to have its truck drivers apply the fumigant Phostoxin to truckloads of alfalfa cubes, which were then hauled to the Ports of Seattle and Tacoma. From May to October 1990, at least 368 of these fumigant applications took place.

Phostoxin is a restricted use pesticide and must be applied only by certified applicators, or by trained workers in the physical presence of a certified applicator. At the time of these applications, neither of these requirements was met by Taggares employees. The EPA Region X complaint alleged 479 violations of FIFRA. Additional violations included failure to placard fumigated sites, failure to aerate containers before moving them over public roads, and failure to aerate fumigated areas prior to reentry by unprotected workers. This case was referred to EPA by the Washington State Department of Agriculture, which had received a complaint from a Taggares employee that he had become ill after handling the fumigant. This case will emphasize the seriousness with which EPA views worker protection issues.

Carter Wallace: On October 4, 1991, EPA issued an administrative complaint against Carter Wallace, Lambert Kay Division, for violations of the FIFRA Good Laboratory Practice regulations. This was the first enforcement action brought against a study sponsor under the GLP regulations, 40 C.F.R. Part 160. Any person who submits to EPA an application for a research or marketing permit and who, in connection with the application, submits data from a study to which the GLP regulations apply, shall include a statement that the study was conducted in accordance with the GLP regulations. Carter Wallace submitted such a statement to EPA in connection with its application for a research or marketing permit. However, that statement was found to be false in that the studies submitted were found to have been conducted in violation of the GLP regulations. That false statement formed the basis of the $260,000 FIFRA Complaint. The parties agreed to settle the matter for $132,000. In addition to the cash penalty, Carter Wallace agreed to submit a "GLP Assurance Protocol" which is intended to serve as an in-house corporate guidance document on preventing future violations of the GLP regulations.

State Enforcement Actions

Montana Department of Agriculture (MDA): MDA responded to a complaint alleging that a county weed district was transferring pesticides from their original containers to other empty containers bearing different brand names and labels and not recording the actual product name on application records. Specifically, the product Transline was being used in place of and in the containers of the products Stinger and the product Silhouette was being used to replace the product Roundup in Roundup containers. This switch was being done to save the County money. The County was found to have committed the following violations: false information was entered on application records, use inconsistent with the "actual" product label, chemical repackaging into unauthorized containers, and chemicals distributed in unauthorized containers. After intense deliberations, the MDA settled for a fine of $750 and the County's agreement to implement a pesticide education campaign in the media and to implement a training program for employees. The employee training program was scheduled to cost the County $3,000.

Targeted enforcement of Phostoxin (aluminum phosphide) labeling (including endangered species label requirements). Region VIII identified the sale and use of Phostoxin, especially for the control of prairie dogs, for special attention in FY 91 and continued this emphasis in FY 92. Compliance monitoring activities had indicated that RUP dealers were not routinely providing complete labeling to purchasers of Phostoxin (the labeling refers to a separate booklet). This problem seems to have been corrected. There were concerns that users were not complying with labeling requirements aimed at protecting the Black Footed Ferret. As a result of this effort, the Region has issued several warning letters to Certified Private Applicators in Colorado (Taylor Farm, Johnson Farm, Walker

Farm, Reed Farm, French Farm and Coppinger Farm) for failure to comply with endangered species labeling. The Region has also been actively involved with the U.S. Fish and Wildlife Service, the Division of Wildlife to resolve issues concerning prairie dog control and the need to protect the Black Footed Ferret.

Multi-Media Enforcement

U.S. v. The Dexter Corporation (D. Ct., Hartford): A Consent Decree was lodged on September 3, 1992 resolving civil violations of the Clean Water Act and RCRA at the Dexter Corporation's paper manufacturing and processing facilities and cogeneration plant in Windsor Locks, Connecticut. At the same time, the company entered a guilty plea to criminal violations of the Clean Water Act and RCRA. In addition, in January 1992, Dexter entered into a compliance agreement with EPA which resolved the administrative suspension of Dexter from government contracting and subcontracting. Among other things, that agreement provides for environmental audits at Dexter's manufacturing facilities nationwide.

The Clean Water Act/RCRA civil settlement requires the company to take corrective actions including installation of water pollution treatment, conducting of a RCRA Facility Assessment (RFA), and closure of former hazardous waste treatment, storage or disposal areas, and to pay a total of $9 million in civil penalties ($7.2 million for water and $1.8 million for RCRA). The settlement further requires the company to conduct a comprehensive multi-media environmental audit at its facility.

The government's complaint charged the company with a series of violations of its NPDES permit, unauthorized discharges, and spills under the Clean Water Act, and with numerous violations of RCRA including failure to file a Notification of Hazardous Waste Activity, unpermitted treatment and/or storage of hazardous wastes, failure to prepare manifests for hazardous wastes, violations of container management requirements, and violations of land disposal restriction requirements. Pursuant to the settlement, the company will correct all violations including spending about $13.8 million for major water pollution control equipment and $2-$5 million on the RFA and closure. As a result of these cleanup efforts, there will be a 70% reduction in BOD and TSS levels in the company's discharges to the Connecticut River, soil and ground water contamination by hazardous wastes at the facility will be addressed, and hazardous wastes will be more safely handled.

The settlement resulted from lawsuits brought jointly on behalf of EPA and the State of Connecticut. The penalties obtained were the highest ever in the history of the water enforcement program and among the highest in the RCRA program.

U.S. v. Homestead Resource Development Company and Homestead Industries: On January 6, 1992, the United States filed a civil complaint in United States District Court under RCRA, CAA and the CWA against the above-referenced defendants. The defendants operate an electric arc furnace dust reclamation facility in Palmerton, PA. The complaint seeks up to $25,000 per day for each violation. The violations are alleged to have occurred over a period in excess of 5 years. The complaint also seeks appropriate injunctive relief under all three statutes.

U.S. v Interstate Lead Company, Inc. (Bankr. Ct., N.D. Ala.): The United States brought this action against ILCO, a secondary lead smelter, and its president, Diego Maffei, seeking reimbursement costs under CERCLA and injunctive relief, and civil penalties for violations of RCRA and CWA. The original action included claims for further injunctive relief under RCRA §3008(h) and §7003, and CERCLA §106, although these claims were settled during trial in July and August 1988. The Court issued a preliminary ruling on December 10, 1990, ruling in favor of the U.S. on most issues, finding defendants liable for civil penalties, injunctive relief, and reimbursement of response costs. The Court did not at that time enter a judgment, nor did it rule on the amount of penalties or the form of injunctive relief.

In its final judgment on October 8, 19991, the Court imposed a $3.5 million penalty on ILCO. The Court also ordered ILCO to comply with RCRA and CWA, imposing several specific requirements, including a requirement that ILCO meet the RCRA financial responsibility requirements during closure. The Court also awarded the U.S. $845,033 in response costs under CERCLA. The Court apportioned the penalty between the State

and Federal governments, with $2 million to be paid to the United States and $1.5 million to be paid to the State of Alabama. This case has been appealed to the Court of Appeals for the Eleventh Circuit

In the Matter of Interstate Power Company: This case contained violations of the PCB regulations as well as reporting violations of EPCRA and CERCLA. The company agreed to dispose of four PCB transformers and to install overflow alarms on its acid and caustic tanks. The case was settled for $9,600 and the total cost of SEPs was $83,680.

In re: Reilly Tar and Chemical: On September 10, 1992, Region V's Waste Management Division issued an amendment, on consent, to an Administrative Order on Consent requiring a remedial investigation and feasibility study (RI/FS) at the Reilly Tar & Chemical Superfund site in Indianapolis, Indiana. The amendment integrates RCRA corrective action requirements fo the facility into the framework of the original RI/FS order.

In March of 1987, the Region had issued an Administrative Order on Consent, pursuant to 122(a) and (d)(3) of CERCLA, to Reilly Tar & Chemical Company for an RI/FS at the site. The first record of decision (ROD) for the site was signed on June 30, 1992, and has a present worth cost of $15,000,000. This first operable unit remedy consists of the installation, operation, and maintenance of a ground water well extraction and treatment system and is designed to prevent the migration of ground water contaminated with benzene, pyridines, and ammonia beyond the site boundaries.

The Region had moved to incorporate RCRA corrective action into the RI/FS because the facility is also an operating RCRA treatment, storage and disposal (TSD) facility. It was issued a RCRA Part B permit in September of 1990. The manufacturing processes at the facility involves the custom synthesis of pyridines and pyridine derivatives used in the manufacture of automobile tires. The federal portion of the permit contained extensive corrective action requirements for those solid waste management units (SWMUS) at the facility where a release or threat of release had been identified by a RCRA facility assessment conducted by U.S. EPA. The facility appealed most of the corrective action provisions contained in the permit because of alleged problems of RCRA/CERCLA coordination.

In the Matter of Union Electric: Region VIII's first multi-media administrative penalty action has been settled. The Administrative Complaint included violations of the CWA, EPCRA, and TSCA. In addition to payment of a civil penalty of $80,000, Union Electric agreed to undertake a number of pollution prevention initiatives.

Federal Facilities Enforcement

Air

GSA Central and West Heating, Washington, DC: Violations of the NAAQS for SO2, caused by building downwash at the Central and West Heating Plants of GSA, have been demonstrated by dispersion modeling. On February 18, 1992, a 3-party Federal Facilities Compliance Agreement (including EPA, GSA and the District of Columbia Department of Consumer and Regulatory Affairs) was executed. The purpose of the Agreement is to bring the Central and West Heating Plants into full compliance with the requirements of PSD/NSR, NSPS and the NAAQS. The Agreement negated the need for a formal EPA declaration of Nonattainment in the Nation's Capital.

Rocky Flats (NESHAPS): On March 3, 1992, Region VIII issued a Clean Air Act §113 Compliance Order to EG&G, the site's operators for DOE, for violations of Subpart H of the radionuclide NESHAPS. The order requires EG&G to achieve compliance with the effluent monitoring requirements of 40 C.F.R. §61.93(b) and to complete four specified projects in order to evaluate the existing radionuclide monitoring systems for modifications to bring them into compliance.

Savannah River (NESHAPS): A Federal Facility Compliance Agreement between EPA and DOE was executed on October 31, 1991, will bring DOE into full regulatory compliance with the Subpart H radionuclide National Emission Standards for Hazardous Air Pollutants (NESHAPS) requirements by September 30, 1993. This agreement is a follow-up to the interim compliance agreement completed in June 1991.

CERCLA

Davisville Naval Construction Battalion Center (NCBC) and the Naval Education and Training Center (NETC): EPA, the State of Rhode Island, and the Navy entered into Federal Facilities Agreements (FFA) under CERCLA §120 for these two facilities on March 23, 1992. The NCBC and NETC agreements are designed to address the investigation, development, selection and implementation of response actions for all releases or threatened releases of hazardous substances at the two installations. The FFAs were negotiated concurrently and contain similar language, except for site specific provisions. NCBC Devisville is eighteen miles south of Providence in North Kingstown, Rhode Island. It was listed on the NPL on November 21, 1989. NCBC is scheduled for closure pursuant to the Defense Base Closure and Realignment Act of 1990. The tentative closure date is September, 1994. NETC Newport was listed on the NPL on November 21, 1989. NETC is currently the Navy's largest officer training facility.

U.S. Defense Logistics Agency: On July 24, 1992, the U.S. Defense Logistics Agency (DLA) signed a Consent Order with EPA under which it agreed to conduct a Remedial Investigation/Feasibility Study for the Arctic Surplus site near Fairbanks, Alaska. DLA is the parent agency of the Defense Reutilization and Marketing service, which arranged for transport of contaminated materials to the site, where they were salvaged. DLA also conducted a removal action at Arctic Surplus in 1990 and financed a further removal in 1991. This is one of the few sites in the country where a federal PRP has agreed to conduct response actions at a privately-owned site.

DOE Oak Ridge Reservation: A CERCLA §120 Federal Facilities Agreement (FFA) for Oak Ridge was finalized in November 1991 and became effective on January 1, 1992. The Oak Ridge Reservation is a DOE "megasite" that consists of three different major facilities: the Oak Ridge National Lab, which is charged with conducting research for both defense and non-defense purposes; the Y-12 Plant, which produces components for various nuclear weapons programs; and the Oak Ridge Gaseous Diffusion Plant, which was used for Uranium enrichment until 1985 when the plant was permanently shut down. The Oak Ridge site is currently divided up into 43 operable units for purposes of investigation and remediation under CERCLA.

Fernald Consent Agreement: During Fiscal Year 1992, U.S. DOE clean-up of its Feed Materials Production Center located in Fernald, Ohio has progressed in accordance with the requirements of the Amended Consent Agreement signed on September 20, 1991. Most activities have been timely and for those activities that were delayed, U.S. DOE obtained extensions of time in accordance with procedures and criteria set forth in the Consent Agreement. There are currently 27 removal actions either completed, ongoing, or planned.

One of the most notable problems at Fernald are the K-65 silos. These two 80-foot (diameter) surface tanks of residue from the Manhattan Project formed the largest point source of Radon in the country. The K-65 Silo removal action, involving the installation of 800 tons of bentonite into the silos was completed ahead of schedule on November 28, 1991. During the past fiscal year, U.S. DOE reorganized its management at Fernald, including the hiring of a new lead clean-up contractor in order to more efficiently focus its clean-up activities.

Hanford Nuclear Reservation: As part of the Hanford Tri-party agreement, DOE was to complete construction and initiate operations of a low level mixed waste laboratory on or before January 31, 1992. On October 31, 1991, DOE submitted a request to change this deadline which EPA and the state of Washington denied. DOE then initiated dispute resolution.

After protracted negotiations, the parties reached agreement on the dispute. As part of the settlement, DOE must seek funding for new expedited response actions at Hanford, and construct and operate an on-site laboratory that is smaller than the original laboratory. In addition, DOE agreed to the assessment of a $100,000 penalty. Finally, the settlement allows DOE one year to demonstrate that low level mixed waste laboratory needs can be satisfied using the combination of existing commercial laboratory capacity and the downsized on-site laboratory currently under construction.

Weldon Spring Site, Missouri: In February of 1992, EPA and DOE amended an existing pre-

SARA cleanup agreement for the Weldon Spring Site to bring it into line with the requirements of §120 of CERCLA. The §120 Agreement became effective July 1992. The Weldon Spring Site is located approximately 30 miles west of St. Louis, Missouri. It consists of two non-contiguous areas, a 217-acrechemical plant area and a 9-acre limestone quarry. These areas are part of what originally was a 17,000 acre ordnance works used by the Department of the Army during World War II to produce explosives. The ordnance works closed at the end of World War II and all but 2,000 acres of the property were transferred to the State of Missouri and the University of Missouri. In the mid- 1950's, AEC, a predecessor to DOE, acquired what is now the chemical plant area for use in processing uranium and thorium ore concentrates. Uranium and thorium processing took place at the chemical plant from approximately 1957 until 1966. The Army re-acquired the property in 1967 and began preparation for herbicide manufacturing, but no herbicides were produced. The Army ultimately transferred custody of the chemical plant and quarry areas back to DOE.

The Army used the limestone quarry to dispose of chemical wastes from its explosive manufacturing in the 1940's. AEC used it to dispose of radioactively contaminated waste and other waste materials in the 1960's. Much of the debris resulting from the Army's preparations for herbicide production was disposed of in the quarry.

The §120 Agreement establishes the procedures and schedule for planning and conducting cleanup actions at both the chemical plant area and quarry, as well as areas off the DOE installation which have been contaminated as a result of activities conducted in the chemical plant and quarry areas. Various operable units have been established to address remedial actions and several removal actions have already been initiated to address short-term cleanup actions. The value of the settlement amounts to $857 million. While the State of Missouri was not party to the 120 Agreement, negotiations are now underway to add the State as a party.

RCRA

Langley Air Force Base (Virginia): An EPA multi-media compliance inspection, in 1991, showed numerous RCRA violations. A Notice of Noncompliance and Compliance Schedule issued in September 1991, laid out a detailed schedule for permitting or closing previously unpermitted storage units, improved recordkeeping, comprehensive training, and LDR compliance. Following several months of negotiation, a Federal Facility Compliance Agreement was signed with the Air Force in April 1992. The Agreement required a Pollution Prevention Program to be initiated within 90 days. Langley Air Force Base has complied with all requirements of the Agreement.

Oak Ridge Site: On June 12, 1992, EPA signed a Federal Facility Compliance Agreement with the Department of Energy to address the RCRA Land Disposal Restriction (LDR) issue at DOE's Oak Ridge Reservation site at Oak Ridge, Tennessee. The FFCA was entered into as a result of DOE's storing of wastes at Oak Ridge which are prohibited from land disposal. The land disposal restriction program prohibits the land disposal of certain wastes unless they are either treated using specific technologies or are treated to specific treatment levels. The storage of these wastes for which no operational treatment system exists constitutes a technical violation of the land disposal requirements of RCRA. The Oak Ridge FFCA is an important commitment on behalf of DOE to develop technologies and carry out the treatment of radioactive mixed waste streams as well as to address the related waste management issues associated with those waste streams at Oak Ridge.

Paducah Site: The Paducah Agreement addressing LDR storage prohibition violations was executed in July, 1992. It is similar to the Oak Ridge Agreement on land disposal.

Quantico Marine Base (Virginia): Annual RCRA inspections by Virginia and EPA in 1988 - 1990 showed numerous significant RCRA violations, including unpermitted hazardous waste storage, at this military training base on the Potomac River. EPA's Notice of Noncompliance, issued in November 1990, required prompt correction of these violations, which also included inadequate waste minimization and improper storage practices. A Federal Facility Compliance Agreement was signed in January 1992, completing a lengthy negotiation which involved participation by senior officials of EPA and the

Navy. The Agreement required development and implementation of a pollution prevention plan. This was one of the few remaining cases included in the Chesapeake Bay Enforcement Initiative announced by Administrator Reilly in December 1989.

Naval Surface Warfare Center: EPA and the Department of the Navy signed a Federal Facility Compliance Agreement on May 22, 1992, to address RCRA violations at the Naval Surface Warfare Center, Dahlgren Division, Dahlgren, VA. Under terms of the Compliance Agreement, the Navy is required to correct all RCRA violations within a specific timeframe. This enforcement action was a component of the Chesapeake Bay compliance initiative to target facilities whose violations directly impact the water quality of the bay.

The specific violations included failing to: (1) inspect shipments of waste to determine if they were hazardous; (2) specify how waste should be analyzed to determine if they were hazardous; (3) conduct analysis, prior to thermal treatment, on explosive-contaminated waste for its heating value, and its halogen, sulfur, lead and mercury content; (4) determine that the sludge generated from the on-site wastewater treatment plant is a hazardous waste and is restricted from land disposal; and (5) obtain a permit for treatment of hazardous waste in certain units of the wastewater treatment plant.

The Compliance Agreement specified a number of corrective actions to be taken and a timetable for carrying them out. The Navy was required to submit for approval by the VA Department of Waste Management (VDWM) and review by the EPA the following items: (1) a waste analysis plan, including methods for evaluating explosive-contaminated waste, and procedures to inspect and analyze shipments of hazardous waste; (2) a groundwater monitoring plan and designs for a groundwater monitoring system installed to sample on a quarterly basis all upgradient and downgradient wells, for a minimum of at least four consecutive quarters; (3) all information in its possession regarding the concentrations of lead in the soil in areas where land application of sludge has occurred; (4) a Pollution Prevention/Waste Minimization Program to reduce the quantity and/or toxicity of the wastes generated at the facility.

UST

Idaho National Engineering Lab: Region X issued a field citation to the Department of Energy at the Idaho National Engineering Lab for compliance violations of the underground storage provisions. DOE achieved compliance with the field citation in a timely manner.

TSCA

Gaseous Diffusion Plants at Oak Ridge, Paducah and Portsmouth: A Federal Facility Compliance Agreement, which addresses TSCA violations at the DOE gaseous diffusions plants in Ohio, Kentucky, and Tennessee, became effective in February 1992. The Agreement establishes a plan to bring DOE's Uranium Enrichment Plants in Portsmouth, Ohio and Paducah, Kentucky and DOE's former Uranium Enrichment Plant located in Oak Ridge, Tennessee into full compliance with TSCA and the PCB regulations.

The FFCA addresses the requirements of the PCB regulations applicable to the unauthorized use of PCBs in process lubrication oil, ventilation duct gaskets, and electrical potential devices and the unauthorized storage of PCBs at the facilities.

This FFCA commits DOE to a clean-up schedule, and requires certain worker safety measures in the meantime (e.g. troughing and air sampling). The FFCA will remain in effect until decommissioning and demolition of all three facilities (scheduled for 2015).

A related case against a DOE contractor-operator at the facilities, Martin Marietta Energy Systems, was settled with payment of a $50,000 penalty and correction of the violations.

USS Lexington Compliance Agreements: When the legendary Navy aircraft carrier, USS Lexington was slated to be transferred to the city of Corpus Christi, Texas as a museum, OFFE undertook primary responsibility for coordinating all the necessary EPA offices and drafting the required documents to address the unauthorized use of PCBs on the vessel. Facilitating the transfer of the vessel required the drafting and execution of two Compliance Agreements within an expedited timeframe. The Agreements were executed on June 10, 1992, about three months from the time OFFE was initially contacted by the

Navy and Region VI. The aircraft carrier is now exhibited as a museum in Corpus Christi.

Criminal Enforcement - All Statutes

U.S. v. Anthony St. Angelo (D. Md.): On June 5, 1992, Anthony St. Angelo, former owner of the St. Angelo's East Coast Furniture Renewal, Inc. of Ijamsville, Maryland, was sentenced in Federal District Court in Baltimore, Maryland, to 21 months in jail and one year of supervised release. Mr. St. Angelo was convicted in December 1991 of four counts of illegal disposal of a hazardous waste under RCRA. He was indicted by a federal grand jury in May 1991 for directing employees to dispose of waste furniture stripping solvents at the company site in Maryland. He operated a furniture refinishing business which largely handled U.S. Government contracts.

U.S. v. Baytank (S.D. Texas): On March 24, 1992, Baytank, Inc., and three of its current or former employees, entered guilty pleas and were sentenced in Houston, Texas. Baytank was fined $1 million for six violations of the CWA occurring between 1983 and 1986, and one conviction under CERCLA. Havaar Nordberg, the former executive vice president, as well as Roy Johnsen, the operations manager at Baytank, each pled guilty to two violations of the CWA. Donald Gore, an environmental consultant for Baytank also pled guilty to one violation of the CWA. Nordberg and Johnsen were each fined $40,000. Gore was fined $20,000. The defendants had discharged hazardous wastes, generated from the rinsing of onshore chemical storage tanks, into waters of the United States from vessels. The discharges caused potentially significant damage to the aquatic environment located near the Bayport Turning Basin which flows into the Houston Ship Channel.

Baytank, Nordberg, Johnsen, and Gore had been tried previously on these charges in late 1988. After the jury convicted the defendants, the court dismissed certain counts against the company and the individuals, and granted a new trial on other charges. The appellate court reinstated the guilty verdicts against Baytank, and ordered the corporation to be sentenced for the offenses of which it had been convicted; it also ordered Havaar Bordberg, Roy Johnsen, and Donald Gore to be retried.

U.S. v. Bright Leaf Sewage Treatment, Inc. (E.D. Kent): On October 9, 1991, Bright Leaf Sewage Treatment, Inc. (BLST) entered a plea of guilty to a felony violation of the CWA. BLST, a Kentucky corporation, was sentenced to a fine of $350,000 based on its conviction for the willful discharge of effluent into Dry Branch, a tributary of the Salt River in Mercer County. As part of the sentence, the corporation conveyed ownership of the sewage treatment plant, the property upon which the plant is located, and all sewer lines and other equipment necessary to operate the plant to a corporation formed by the homeowners of the Bright Leaf Estates subdivision who are serviced by the plant. In addition, BLST's principal officer, Jerry Tyler, conveyed ownership of additional property to the same entity. BLST and Tyler were also ordered to publish a public apology for the environmental violation and Tyler was ordered permanently barred from participating in the operation of sewage treatment facilities.

U.S. v. Bristol Meyers Squibb (N.D.N.Y.): On April 24, 1992, Bristol Meyers Squibb Co., located in Syracuse, New York pled guilty, pursuant to a plea agreement, to four counts of violations of the CWA in an information filed by the U.S. Attorney's office in the Northern District of New York. Counts I and II alleged negligent discharge of wastewater into a water of the U.S. in violation of a permit. Counts III and IV alleged negligent discharge of acetone, methylisobutylketone, and condensate into a water of the U.S. from a point source without a permit. Bristol Meyers Squibb was sentenced to pay a fine of $3,500,000. Three million dollars of the fine was suspended upon the condition that Bristol Meyers Squibb pay $3 million to New York State as restitution. Bristol Meyers Squibb agreed not to seek Federal or State tax deductions for these monies. They also agreed not to seek to apply these monies to any other litigation with regard to this agreement. Furthermore, they agreed to build and place into operation before 1996 a pretreatment facility for the wastewater generated by their operations, at a cost of no more then $30 million nor less than $10 million.

U.S. v. Chemical Conservation Corporation of Georgia and Eugene Milton Goldfuss: On July 8, 1992, a one count information was filed charging Chemical Conservation of Georgia, Inc. (CCGI) and Eugene Milton Goldfuss, the former plant

manager of CCGI, with felony violations of the RCRA. On the above date, both CCGI and Goldfuss pled guilty as charged to aiding and abetting each other and other unnamed defendants in the illegal treatment of hazardous waste in violation of Title 42, United States Code, §6928 (d)(2)(a). The violations occurred over a five year period beginning in 1987.

As part of the plea agreement, CCGI was placed on five (5) years probation and ordered to pay a fine of eight hundred thousand dollars ($800,000). A sentencing date for Goldfuss, who is now cooperating with EPA special agents, has not been set.

During the period charged in the information, CCGI owned and operated a hazardous waste fuel blending and solvent recycling facility in Valdosta, Georgia. The facility was permitted to accept various waste solvents including F001, F002, F003 and F005. From approximately April, 1987 to August 1989, Goldfuss and other unnamed persons acting on behalf of CCGI, caused "Land Ban" listed "F" wastes to be unlawfully treated and disposed.

U.S. v. Chevron USA (C.D. Cal.): Sixty-five misdemeanor violations of the Clean Water Act related to the unpermitted discharging of oil, grease, and sandblast waste, and the false reporting of these discharges, have led Chevron USA to plead guilty to all 65 charges, and pursuant to a plea agreement to pay $6.5 million in criminal fines. The plea was entered on July 20, 1992. In addition, a consent decree was lodged with the Court settling a parallel civil suit for $1,500,000 for a total of $8 million in fines. The case stemmed from the operation of Platform Grace, an oil production facility in the Santa Barbara Channel off the California coast. The platform has a NPDES permit to discharge treated process water. In the early 1980's, company managers realized that the existing treatment system was inadequate to properly remove oil and grease from the process water. An effective method was discovered in 1984, but because of expense, the company sought cheaper means to treat the water. The cheaper means were unsuccessful and caused the platform to exceed its discharge limit for grease and oil by several hundred times. Chevron withheld data from a Discharge Monitoring Report that would have alerted the EPA to the problem.

Craven Laboratories: Eleven individuals have pled guilty since a 20-count indictment was returned against Craven Laboratories, its owner, Don Craven, and three other employees, in Austin, Texas. Sentencing has been postponed until after the trial of the laboratories and Don Cravens. The eleven individuals (most of whom are former Cravens Laboratory employees) have all agreed to testify against the lab and Don Craven at trial.

Craven Labs contracted with pesticides manufacturers to conduct pesticide residue tests. Information about these tests was then submitted to EPA by the manufacturers to enable EPA to set tolerances for pesticides and to register pesticides pursuant to FIFRA and the Federal Food, Drug, and Cosmetic Act. The defendants allegedly concealed and falsified material information about the calibrations, quality controls and methods used in tests they performed, supervised and reviewed. As a result of this concealment and falsification, the indictment alleges pesticide manufacturers were defrauded of money paid for the pesticide residue tests and false information was submitted to EPA for use in setting tolerances and registering pesticides.

U.S. v. Croda Inks Corporation, et al. (W.D. Tenn): On September 17, 1992, George Moore, Jr., was sentenced to pay a fine of $5,000 and serve one year supervised probation for violations of the Clean Water Act. Moore, the former General Manager at Croda Inks Corporation, an ink formulation and manufacturing company in Memphis, Tennessee was convicted in March 1992, of knowingly causing the unpermitted discharge of solvent washes and water washes, by-products of the ink manufacturing process, into McKellar Lake, an oxbow lake of the Mississippi River.

U.S. v. John H. Curtis (D. Alaska): On May 26, 1992, John Hoyt Curtis was sentenced to 10 months in prison for violating the Clean Water Act by contaminating an inlet of the Bering Sea with jet-propulsion fuel. Curtis had been convicted on March 18, 1992, in the U.S. District Court of Anchorage, AK of both knowing and negligent violations of the Clean Water Act.

Curtis, a civilian employee, was the Fuels Division Director for the Naval Air Station, Adak, Alaska during late 1988 and early 1989. During that time Curtis repeatedly ordered the

pumping of jet fuel through a pipeline he knew to be leaking. As a direct consequence of his actions, hundreds of thousands of gallons of fuel flowed into Sweeper Cove, an inlet of the Bering Sea.

U.S. v. Henry R. Edelberg (D. Conn.): On May 26, 1992, Henry R. Edelberg, the president of Nedmarc, Inc., a truck trailer leasing business in Colchester, Connecticut, pleaded guilty to one count of dumping hazardous wastes in violation of RCRA. The indictment filed on December 17, 1991 charged that in May 1991, Edelberg disposed of approximately twenty drums of hazardous waste, including industrial solvents and cyanides, by dumping them into the ground at his business facility in Colchester in violation of RCRA. The indictment also charged that Edelberg stored approximately thirty-four drums of hazardous waste, including industrial solvents, metal finishing sludges, acids, and cyanides in a truck trailer parked at the Colchester location for at least the past five years without a storage permit. At the court hearing on May 26, Edelberg admitted that he had hired several men to dig a pit on his property, and dump the contents of barrels stored in a trailer into the pit. Soil samples from the pit were analyzed and were determined to contain hazardous wastes and cyanides. On July 27, 1992, Edelberg was sentenced to six months of home detention, three years of probation, 150 hours of community service and a fine of $213,906.52 payable to the State of Connecticut as restitution for clean up costs incurred in connection with the dumping of the hazardous waste.

U.S. v. Enviroanalysts, et al. (E.D. WI.): On October 4, 1991, in Milwaukee, Wisconsin, Enviroanalysts, Inc. and its owner, John Ruetz, were found guilty of falsifying analytical data during 1986 and 1987 for clients who were required to comply with RCRA and the Clean Water Act. Reutz was sentenced on December 10, 1991, to a $14,000 fine, 48 months probation and 200 hours community service, while the company was also fined $14,000. This case arose from allegations that the lab was routinely falsifying data by using incorrect equipment and procedures to certify compliance and fabricating test results for samples that has never been taken. Ruetz and Enviroanalysts were indicted in August 1990, on fifteen counts of making false statements under RCRA, and under the Clean Water Act, as well as mail fraud and conspiracy. The vice-president of Enviroanalysts, Robert Schloesser, was charged separately and pled guilty to two counts of violating the Clean Water Act. Schloesser eventually testified against the corporation and Ruetz. Ruetz was acquitted on the one conspiracy charge.

U.S. v. Envirosure Management Corp., Inc., Frontier Chemical Waste Process, Inc., et al. (W.D. N.Y.): On February 26, 1992, in Buffalo, New York, Frontier Chemical Waste Process, Inc. pled guilty, pursuant to a plea agreement, to falsifying an EPA mandated hazardous waste manifest in violation of RCRA. The company operated its treatment, storage and disposal (TSD) facility in Niagara Falls, N.Y. It imported waste solvents from Canada that under RCRA's land-ban regulations could not be disposed of in a landfill, and then falsely manifested them as wastes that could be landfilled and shipped them to a landfill for disposal. As punishment, the company agreed to pay a fine of $10,000, be placed on probation for five years, and that the original management and ownership of Frontier Company would be banned from any ownership or management relationship with the TSD facility in Niagara Falls. EPA has also suspended Frontier and all other Envirosure companies from participating in federal government contracts.

U.S. v. William J. Floyd, Douglas M. Floyd, and Southern Dredging Company, Inc. (D. S.C.): On August 19 1992, William J. Floyd and Douglas M. Floyd were sentenced pursuant to guilty pleas to an indictment charging them with felony violations of the Clean Water Act, and Subornation of Perjury, Title 18, United States Code, §1622. Both defendants were sentenced to six months of home confinement and five years of supervised probation.

During the sentencing the defendants admitted they illegally discharged dredge spoils into the Cooper River on several occasions in February, 1988 without having obtained an Army Corps of Engineers permit. William J. Floyd was the superintendent and had overall authority over the dredge "Cherokee." Douglas M. Floyd was the Captain of the dredge and was responsible for its daily operation. In addition, both defendants admitted they compelled witnesses to lie to an investigative grand jury hearing evidence in the case.

The "Cherokee" is owned and operated by Southern Dredging Company, Inc. (Southern), of Charleston, South Carolina. Southern previously pled guilty to violations of the Rivers and Harbors Act and was fined $100,000 and placed on one year probation. The conviction resulted in Southern being listed as a company barred from obtaining government contracts.

U.S. v. Samuel Gratz (E.D. Pa.): Illegal dumping of chemical wastes into a storm drain, and illegal transport and storage of acute and characteristic hazardous waste led to a guilty verdict for the president of a pharmaceutical manufacturing company on September 30, 1992. Samuel Gratz is the former President of Lannett Company, Inc., a pharmaceutical manufacturer located in Northwest Philadelphia. He was found guilty of one count of illegal transportation of hazardous waste to an unpermitted facility, one count of illegal transportation of hazardous waste without a manifest, one count of unpermitted storage of hazardous waste, and one count of unpermitted discharging of pollutants into navigable water of the United States. Lannett wholly owned a subsidiary named Astrochem Corporation. Gratz was found guilty of directing Lannett employees in May 1987 to transport hazardous waste from the Astrochem facility located in northern New Jersey to Lannett's facility in Philadelphia. This same hazardous waste was stored at the Lannett facility from June 1987, until August 1991. The hazardous wastes were both acutely hazardous (phosgene and sodium cyanide) and characteristic for ignitability, reactivity and corrosivity. The investigation further determined that between May 1987, and July 1989, Gratz directed Lannett employees to dump some of the chemical wastes down a storm drain which discharged directly into the Delaware River.

U.S. v. Reginald Max Goldsmith (N.D. Ga.): On December 5, 1991, in Atlanta, Reginald Max Goldsmith was sentenced to three years and ten months of imprisonment pursuant to his conviction by a jury on two counts of an indictment charging felony violations of RCRA. The proof at trial demonstrated that Goldsmith, using a fraudulent company, contracted with Hunt Chemicals Company to transport and dispose of approximately two hundred 55-gallon drums containing various hazardous wastes. After improperly removing the drums, Goldsmith provided Hunt Chemicals with fraudulent documents representing compliance with all EPA regulations regarding the transportation and disposal of hazardous waste. The drums ultimately were discovered, illegally discarded, at three separate locations in the Atlanta metropolitan area.

U.S. v. John Hall (E.D. Mo): Failure to report the release of a hazardous substance to the National Response Centers has led to a one-count CERCLA felony conviction of John Marshal Hall, and his being sentenced to four years of probation and a $3000 fine. Sentencing occurred on June 29, 1992. The violation pertained to Hall's participation in the unlawful disposal of 13 drums of spent dry cleaning solvents in a rural area of Jefferson County, Missouri, in March of 1989. Hall's co-defendant, Marvin Mueller, had been previously sentenced.

U.S. v. Hansen Container Company (D. Colo.): Routine dumping of liquid hazardous waste on the ground, and the burning of hazardous waste that remained in used drums, led a drum reconditioning company, its president, and another company official to plead guilty to RCRA and CAA violations. The pleas were entered on August 20, 1992. Hansen Container Company is a drum reconditioning business with offices and plant facilities located in Grand Junction, Colorado, where it obtained used 55-gallon drums from industrial and governmental sources. It processed many of these drums by dumping liquid hazardous waste from the drums, and running them through an incinerator, which burned off residue and paint. The incinerator was operated illegally, and caused plumes of black smoke and lead waste to be released into the environment. Hansen Container does not have a permit to store, treat or dispose of hazardous waste. Christian E. Hansen, Jr., President and part-owner of Hansen Container Company, and Michael Bilney, former Executive Administrative Assistant of Hansen Container Company, pled guilty to misdemeanor violations of the Clean Air Act. This case was a joint EPA/FBI effort. Assisting in the investigation was the Colorado Department of Health, the Colorado State Patrol and the City of Grand Junction Fire Department, Grand Junction, Colorado.

Christian E. Hansen, Jr., President and part-owner of Hansen Container Company, and Michael

Bilney, former Executive Administrative Assistant of Hansen Container Company, were each sentenced on October 21, 1992, to a one-year sentence composed of 30 days of incarceration, the balance to be served on probation, and $10,000 fines. These sentences are the first ever to be ordered under the CAA regarding opacity violations.

U.S. v. Eugene Holderness, et al. (D. Nev.): On May 21, 1992, a jury at Reno, NV returned verdicts in the trial of former employees of Hi-Shear Technology, Inc., now called Defense Systems Corp. Eugene Holderness, former executive assistant to the president of Hi-Shear, was convicted of one count of transportation of a hazardous waste without a manifest, one count of disposal of a hazardous waste in violation of a permit and one count of making a false statement to the Nevada Division of Environmental Protection. Richard Heuer, former director of operations for Hi-Shear, was convicted of one count of making a false statement, but he was acquitted of the charge of transporting a hazardous waste without a manifest. Defendant Harold Karp, former manager of Hi-Shear's shipping and receiving department, was acquitted of the charge of transportation of a hazardous waste without a manifest. This case represents the first time that corporate officials have been convicted for their roles in federal environmental offenses in Storey County, Nevada.

Hi-Shear was a manufacturer of explosive bolts and small rocket motors for NASA and the Navy. As part of that operation, the company obtained a RCRA permit from the State of Nevada to store and dispose of reactive waste propellant in a burn pit ("thermal treatment unit"). The permit prohibited the storage and disposal of wastes generated elsewhere. Hi-Shear had shipped its reactive hazardous waste to permitted facilities, but stopped in 1987. Its wastes generated at Torrance, California, were then shipped, without manifests, to the Storey County site and disposed of there. Drivers were instructed to take back roads and to misrepresent the loads they carried. Holderness was sentenced to 15 months of imprisonment and a fine of $5,000 as a result of his conviction. Richard L. Heuer, was sentenced to five years probation and a $5,000 fine for making false statements to the DEP. Defense Systems Corporation was sentenced to pay a fine of $75,000 and to serve five years of probation. Defense Systems had pled guilty on December 18, 1991, to the illegal transportation and storage of hazardous wastes.

U.S. v. Frank Jordan (D. Or.): On June 15, 1992, Frank Jordan, environmental control supervisor for the wastewater treatment plant at Ore-Ida Foods of Ontario, Oregon, was sentenced to two months of house arrest, five years of probation, a $5,000 fine, and 100 hours of community service. Jordan's sentencing was the result of his guilty plea to a one count information charging him with rendering inaccurate a monitoring method in violation of the CWA, on March 24, 1992. Ore-Ida Foods, Inc. has its corporate headquarters in Boise, Idaho, and is a subsidiary of the H.J. Heinz Co., Inc. of Pittsburgh, Pennsylvania.

U.S. v. Norman Kirkham (N.D. TX): On April 24, 1992, in Forth Worth, Texas, Norman Kirkham pled guilty to two RCRA felonies, one involving storage of hazardous waste without a permit, and the other ch[illegible]ing falsification of a hazardous waste manifest. He was sentenced to 21 months in prison on Jul[illegible], 1992. No fine was imposed.

Kirkham w[illegible] the owner and operator of Hazardous Waste Management, Inc., of Southlake, [illegible], a company that illegally stored hazardous wastes and biomedical wastes in three unpermitted locations. Kirkham had collected numerous shipments of hazardous waste from various generators, and was paid to properly dispose of the waste. Instead, he was storing the waste at three locations without having obtained any RCRA permits or interim status. He also illegally forged hazardous waste manifests in an effort to conceal the fact that the wastes had not been properly disposed of. Manifests were signed by Kirkham indicating that the waste had been properly disposed; thus the generators were unaware that the waste was being improperly stored.

U.S. v. Kenneth Laughlin, et. al. (N.D. N.Y.): On May 29, 1992, Kenneth Laughlin and John Donnelly each pled guilty to one count of violating CERCLA by failing to notify the National Response Center of the release of a reportable quantity of a hazardous substance (creosote). Laughlin was the president and plant manager of GCL Tie and Treating, and Donnelly was the operations supervisor. GCL Tie and Treating, which was located in Sydney, New

York, treated unfinished railroad ties with creosote from April, 1986 until the site was abandoned in January 1988. Creosote sludge was illegally disposed of on site and on adjacent lands during the plant's operation. The plea agreement required each to provide information and testimony relative to alleged crimes committed by a third defendant, Harris Goldman, former owner of GCL Tie and Treating. In September 1992, Goldman was convicted of one count of failure to notify under CERCLA and one count of illegal disposal under RCRA.

U.S. v. James Long and U.S. v. Scott Brady: On October 18, 1991, James Long, Chief Executive Officer of the Safe Air Environmental Group was sentenced in the Western District of New York. In a related case, on April 8, 1992 Scott Brady, Foreman of the Safe Air Environmental Group, was sentenced in the same court. Both men had plead guilty to violations of 18 USC §1001, and both were sentenced to one year probation, a $2,000.00 fine and 200 hours of community service. These cases involved the illegal removal of asbestos from the Basic Oxygen Furnace at the Bethlehem Steel Plant in Tonawanda, New York. Both convictions were obtained as a result of investigations conducted by the WDNY LECC sub-committee on environmental crimes and EPA.

U.S. v. Lloyd (N.D. OH): On August 11, 1992, David Lloyd, the former Superintendent of the Allen County (Ohio) Sanitary Engineering District was sentenced following his guilty plea to charges of falsification of monthly operating reports submitted to Ohio EPA. Lloyd received one year of probation on each of five counts, to run concurrently, and a fine of $6318. As a condition of probation, Lloyd will be required to remain at home and wear an electrical monitoring device for 180 days.

Through search warrants and interviews of sewage treatment plant employees, EPA had determined that Lloyd ordered the falsification of numerous wastewater analyses, in an attempt to cover up treatment plant inadequacies. The detected falsifications involved the following pollutants: fecal coliform, ammonia, and dissolved oxygen.

U.S. v. MacDonald And Watson Waste Oil Company, et al.: On April 16, 1988, a grand jury indicted MacDonald and Watson Waste Oil, Inc., Narragansett Improvement Co., Inc., Eugene K. D'Allesandro, and several other lower-level employees of MacDonald and Watson for knowingly transporting and causing the transportation of hazardous waste to a facility that did not have a RCRA permit, for failing to notify the National Response Center of a release of a hazardous substance in violation of CERCLA, and for related charges. A jury convicted all defendants except one employee of some of the charges against them. D'Allesandro's conviction was based on the "responsible corporate officer" doctrine, on evidence that he was a "hands-on" manager, and that the knew in the past the company had violated RCRA.

On appeal, the First Circuit reversed the convictions of D'Allesandro and the Narragansett Improvement Co., and remanded for a new trial as to those defendants. The First Circuit rejected the broadest form of the "responsible corporate officer doctrine, which would allow for the conclusive establishment of the element of knowledge by a mere showing that the individual held a position of corporate responsibility. At the same time, however, the First Circuit affirmed that actual knowledge did not have to be proven by direct evidence but could be inferred from the defendant's position, conduct and other facts and circumstances. The court went further and stated that "willful blindness to facts constituting the offense may be sufficient to establish knowledge."

On November 5, 1991, Narragansett Improvement Co. pled guilty to a single count of failure to notify under CERCLA, and on January 8, 1992, was fined ten thousand dollars. On January 15, 1992, a jury began the retrial of Eugene D'Allesandro for shipping hazardous waste to an unpermitted facility. At the conclusion of the government's case, the court granted the defendant's Motion for Judgment of Acquittal.

U.S. v. Metro Container Corporation, et al. (E.D. PA): On May 1, 1992, Lewis Maslow, former CEO of Metro Container Corporation and its subsidiary, Metro-Enterprise Container Corporation, was sentenced to serve 1 year and 1 day in jail, 3 years of probation, and 300 hours of community service for each count of the five environmental felony counts of his conviction. On October 29, 1991, Maslow was convicted of two counts of conspiracy, of operating Metro Container in violation of pretreatment standards, of illegal

disposal of hazardous waste, and of filing a false financial statement with EPA. No fines were imposed on Metro Container Corporation and its subsidiary, Metro-Enterprise Container, as both remain in bankruptcy with no discernible assets. Both corporations were convicted on October 29, 1991, of two counts of conspiracy to violate the CWA and RCRA. Steven M. Zubrin, former maintenance supervisor of Metro Container Corporation, convicted of two counts of conspiracy, illegal disposal of hazardous waste, operating the Metro facility in violation of pretreatment standards, and illegally discharging pollutants into waters of the United States was sentenced to 2 months imprisonment, 36 months probation and 500 hours community service. The defendants were found to be responsible for burying hundreds of drums of hazardous waste on company property and inside the company plant, as well as discharging of thousands of gallons of pollutants into Stoney Creek, a tributary of the Delaware River, and discharging off-spec industrial waste water into the local POTW.

U.S. v. Dale J. Mills and Dale Mills and Associates, Inc. (M.D. Fla.): CWA convictions and a jail term were obtained as a result of two defendant's actions during the design, construction and subsequent operation of a municipal sewage treatment system for the town of Zolfo Springs, Florida. On March 11, 1992, Dale J. Mills and his firm, Dale Mills and Associates, Inc., were sentenced pursuant to guilty pleas to an indictment charging them with felony violations of the CWA, and falsification of material information within the jurisdiction of federal agencies. Dale J. Mills was sentenced to ten months imprisonment, to be followed by five and one-half years of supervised probation. Mills and Associates, Inc. was sentenced to five years probation and ordered to pay $72,000 in restitution. Mills and his firm were contracted to design and construct a self-contained secondary treatment plant using a spray irrigation system. Holm, an employee of Dale Mills and Associates, was the resident inspector for the Zolfo Springs wastewater treatment plant construction project. Mills and Holm withheld information regarding the suitability of the plant site for a treatment plant and spray irrigation field. The installation of the irrigation pipes resulted in nonpermitted discharges of effluent into waters of the United States. Sidney Holm previously pled guilty to related felony violations as charged in the indictment and was sentenced in January, 1992.

U.S. v. Marvin Mueller (E.D. Mo.): The hiring of two men to take twenty-eight 55-gallon drums, thirteen of which contained ignitable waste, and dump them in a rural area of Jefferson County, Missouri, in March of 1989, led Marvin Mueller to be sentenced on September 25, 1991, to pay $94,000 in restitution to the state of Missouri, four months of jail time, and four months of home confinement for disposal of hazardous waste without a permit, in violation of RCRA. Mueller was the owner and operator of Lafayette Square Cleaners of St. Louis, Mo., as well as Vin Mar Supply Co., which bought and sold chemicals used in dry cleaning and industrial cleaning. Local residents reported the abandoned drums. The Jefferson County Sheriff's office investigated and found that the drums were leaking. The investigation proceeded under the auspices of a newly created Environmental Crimes Task Force, a joint effort including EPA, the United States Attorney's Office, and state and local officials.

U.S. v. Kenneth R. Nugent (D. Mass.): On May 27, 1992, Kenneth R. Nugent, an environmental consultant for the Evergreen Construction Company, pled guilty to submitting a false hazardous waste permit application to the EPA. Nugent submitted a falsely backdated permit application to EPA in an attempt to mislead the Agency into believing that his company, Evergreen Construction Company of Bellingham, Massachusetts, had submitted a valid and timely permit application under RCRA. He received a sentence of 12 months probation.

U.S. v. Pacific Enterprises Oil Company (D. WY): Illegal disposal of hazardous and solid wastes at three Wyoming oil fields operated on public lands administered by the U.S. Bureau of Land Management led Pacific Enterprises Oil Company (PEOC) to plead guilty on January 22, 1992, to eight misdemeanor violations of the Federal Land Policy and Management Act. This case is the first major criminal prosecution for hazardous waste dumping under the Federal Land Policy and Management Act, which requires the Bureau of Land Management to protect and administer public lands. Pursuant to the plea agreement, PEOC agreed to pay $1.6 million in fines and to pay restitution by deeding to the United States 1,000 acres of land along the Green River in Desolation Canyon, Utah, a popular recreation

area in the Rocky Mountain states. The court also ordered PEOC to conduct all remedial action required by federal and state authorities at the Notches Dome, Boone Dome and Salt Creek Oil Fields, and to perform environmental compliance audits (including RCRA, CWA, CAA & CERCLA) of its operations in Wyoming.

PEOC buried hazardous waste and other chemicals at the Notches Dome Oil Field near Powder River, Wyoming in November 1986, buried asbestos, scrap metal, pipes and other solid waste at the Boone Dome Oil Field near Powder River, Wyoming, in April 1987 and illegally disposed of hazardous waste at the Salt Creek Oil Field, near Midwest, Wyoming, between October 1988 and June 1990. These illegal disposals included pumping chemicals from drums and spreading the chemicals along dirt roads at the oil field burying the empty drums at the oil field pumping chemicals from other drums and disposing of the chemicals in abandoned wells at the oil field and burying drums of ignitable hazardous waste at the oil field. PEOC is a subsidiary of Pacific Enterprises, which also owns Southern California Gas Company, the nation's largest natural gas distribution utility and Thrifty Corporation, a chain of 1,000 drug and sporting goods retail stores in the West and Midwest. In addition to its Wyoming operations, PEOC produces oil and gas in several other states, Canada and the Dutch North Sea.

U.S. v Pytlarz (N.D. IL): On May 26, 1992, Jeffrey Pytlarz, president and owner of P&H Plating Company of Chicago, was sentenced to serve fifteen months in prison for dumping 4,000 gallons of electroplating solution into the Chicago sewer system in 1989. Pytlarz was also required to serve one year of supervised release after the jail term is completed.

The offense forced a complete shutdown of the Northwest side treatment plant and was directly responsible for the death of 20,000 fish in the Chicago River. The other defendants pleaded guilty and were sentenced to probation.

U.S. v. Ray R. Pleasant and William F. McMurray (E.D. Tenn.): On October 30, 1991, Ray R. Pleasant and William F. McMurray were sentenced pursuant to a guilty plea to a criminal information charging violations of the Clean Water Act and the Migratory Bird Treaty Act. The convictions resulted from the defendants actions on Memorial Day, May 27, 1991, when they pumped water contaminated with diesel fuel from underground storage tanks on Pleasant's property in Kingsport, Tennessee into a storm sewer which emptied into the Madd Branch of the Holston River. The illegal discharge resulted in the deaths of numerous waterfowl at Madd Branch Creek.

Pleasant and McMurray were both sentenced to pay fines of $2,500 for violating the CWA, and $5,000 for violating the Migratory Bird Treaty Act. Additionally, Pleasant was ordered to pay restitution in the amount of $2,600 to the City of Kingsport and $1,200 to the State of Tennessee.

U.S. v. Resource Consultants, Inc., et al. (CWA): On August 26, 1992, in the United States District Court for the Southern District of Alabama, Mobile, Alabama, Judge Alex T. Howard sentenced Norman Porter, the former general manager of Resource Consultants, Incorporated (RCI), to three (3) years probation on an indictment charging Porter (and others) with felony violations of the Clean Water Act and Conspiracy. Porter, along with RCI President Johnny Sanders and the corporation, RCI, had been indicted on April 25, 1992. Porter pled guilty on June 23, 1992. As part of the plea agreement, Porter agreed to cooperate fully with the United States government and to provide truthful testimony at the trial for Johnny Sanders and RCI. After a 4-day jury trial which commenced July 27, 1992, Sanders and RCI were each convicted on all Clean Water Act and conspiracy charges. Sentencing for Sanders and RCI is scheduled for November 20, 1992.

The criminal activity of which the defendants were convicted centers around the illegal discharge of sanitary sewage waste into the Theodore Industrial Canal in May 1988. RCI was involved in the processing of drilling mud and sanitary sewage wastes and was permitted by the State of Alabama to discharge the treated wastewater into the City of Mobile sewer system pursuant to a State Indirect Discharge permit. RCI did not have a National Pollutant Discharge Elimination System permit for any type of discharge into the navigable waters of the United States. Porter and Sanders were charged with ordering employees to pump untreated sewage into the Theodore Industrial Canal

through an underground piping system. Once the discharge was detected by Alabama Department of Environmental Management, inspectors, Sanders and Porter lied about the existence of the piping system and denied discharging anything into the canal.

Rockwell International: Rockwell International Corporation pled guilty in federal court on March 26, 1992, to an Information charging it with ten counts of environmental violations during its operation of the Rocky Flats Nuclear Weapons Plant near Boulder, Colorado, and agreed to pay $18.5 million in criminal fines – the largest amount ever imposed in a hazardous waste case.

Rockwell pleaded guilty in U.S. District Court in Denver to four felony violations of the Resource Conservation and Recovery Act (RCRA) and to one felony and five misdemeanor violations of the Clean Water Act (CWA).

According to the federal sentencing memorandum filed with the court, Rockwell illegally stored and treated hazardous wastes generated during the production of plutonium "triggers" and other components of nuclear weapons at Rocky Flats, about 16 miles northwest of Denver. The government also asserted that the company improperly and illegally discharged wastes through its sewage treatment plant, creating the potential for contamination by runoff to a reservoir used for drinking water.

U.S. v. Sentco Paint Co. (N.D. OH): On June 1, 1992, a Roland Brothers, Rick Brothers, and Donald Cole were sentenced for illegally disposing of hazardous wastes under RCRA. All defendants had pleaded guilty to the charges. Roland Brothers, the former president of Sentco Paint Company, Inc., was sentenced to fifteen months in jail and two years supervision. Rick Brothers, the former Plant Superintendent, was sentenced to eighteen months in jail and three years supervision. A third defendant, Donald Cole, received a sentence of six months of home detention and two years supervision. The corporation will be sentenced at a later date. Charges were dismissed against Sam Minor, as he was determined to be incompetent to stand trial.

In the investigation of the case, EPA had determined that Sentco Paint made an adhesive product from a variety of waste chemicals. When the product proved unusable, customers returned it to Sentco. The defendants solved their resulting disposal problem by burying the unusable (and hazardous) glue under a loading dock being constructed and dumping more material in a neighboring trash dumpster. EPA executed two search warrants and recovered barrels of the hazardous waste adhesive from under the loading dock.

U.S. v. Shell Oil Pipeline Corporation (E.D. Mo.): An 860,000-gallon oil spill into the Mississippi, Gasconade, and Missouri rivers caused by an oil pipeline rupture led Shell Oil Pipeline Corporation to plead guilty to a violation of the Refuse Act, and to agree to the payment of $8,400,000 in fines, restitution, and settlements. Shell pled and was sentenced on February 3, 1992. Shell was ordered to pay a $200,000 fine, and to make restitution to the Federal and State Governments in the amount of $900,000. In addition, a civil action by the State of Missouri was settled i the amount of $7 million. Another $300,000 in restitution was made to individuals directly affected by the spill. The rupture occurred on December 24, 1988, in Maries County, Missouri. The rupture caused a spill in excess of 860,000 gallons of crude oil into the Gasconade, Missouri, and Mississippi Rivers, the largest known spill into the inland waters of the United States. Potentially, this spill caused significant degradation to the aquatic environment of these rivers.

U.S. v. Spirtas Wrecking Company, Inc. (E.D. Mo.): On May 22, 1992, Spirtas Wrecking Company, Inc. was sentenced in U.S. District Court in St. Louis, Missouri. Spirtas had previously pled guilty to four counts of TSCA violations, and one count of giving a false statement to the EPA. Spirtas was sentenced to 3 years probation on each count, to run concurrently, a $40,000 fine on each count, of which $15,000 per count will be suspended by the court upon the defendant's full compliance with all site-remedial action requirements, restitution in the amount of $75,580, of which $10,000 to be made to the U.S. Government for the investigative work of U.S. EPA, and $65,580 to the Missouri Department of Natural Resources of which $55,580 to be in the form of a gas chromatograph for the Missouri DNR Laboratory Services Division. The remaining $10,000 was to be made in accordance with the restitution agreement made by the

defendant with the Missouri Attorney General's Office.

U.S. v. United States Sugar Corp. (S.D. Fla.): On February 3, 1992, in West Palm Beach, United States Sugar Corporation (USSC) was sentenced to pay a record fine pursuant to a guilty plea to an eight-count information charging felony violations of RCRA. USSC was fined $3,750,000.00, the largest monetary fine ever imposed for RCRA and RCRA related criminal violations. J. Nelson Fairbanks, Chief Executive Officer of USSC, was present at sentencing and on behalf of the corporation made a public statement admitting guilt and promising future compliance with all EPA regulations and the laws of the United States. USSC is headquartered in Clewiston, Florida, with additional facilities throughout the State. The conviction stemmed from USSC's illegal transportation of hazardous waste without a manifest, transportation of hazardous waste to a nonpermitted facility, and the illegal disposal of hazardous waste between October 1986 and March 1989 at the corporation's Canal Point facility. The hazardous waste included thousands of gallons of spent solvents that were generated in USSC's milling and maintenance departments. The solvents were disposed of by employees who systematically poured them onto the ground and into drainage ditches and canals. In addition, spent solvents were commingled with oil and illegally transported to a nonpermitted facility. USSC also utilized a soluble lead compound to run approximately 35,000 analytical tests per year. This generated a large volume of highly toxic lead, a hazardous waste, that was illegally disposed of on site and at the county landfill.

U.S. v. Alan Stevens and Stevens Analytical Laboratories, Inc. (D. Mass.): On May 28, 1992, Stevens Analytical Laboratories, Inc., which is located in Stoneham, Massachusetts, and its president, Alan Stevens, pled guilty in federal district court to ten counts of mail fraud. The defendants had been charged on March 23, 1992 with providing false and fictitious testing results to their customers, including various municipalities and hospitals that submitted water to be analyzed by the laboratory. Stevens was sentenced to six months of home detention, and he and the lab were required to pay $6,140 in restitution to their clients. The lab is also under 2 years of supervision by EPA.

U.S. v. Alvin P. Tiedeman, R.M. Engineered Products Incorporated and the Intertech Group (D.S.C.): On November 28, 1991, RM Engineered Products, Incorporated (RM) and its parent company, The Intertech Group (Intertech), each entered pleas of guilty to one count of an indictment charging felony violations of RCRA.

As part of the plea agreement, RM and Intertech, admitted to illegally storing hazardous waste at the company's North Charleston, South Carolina facility.

In addition, Alvin P. Tiedeman, Executive Vice President and Secretary for Intertech, entered a plea of guilty to a one (1) count information charging a misdemeanor violation of the Comprehensive Environmental Response Compensation and Liability Act, Title 42, United States Code, §9603(c). Tiedeman, who is also a senior level executive of RM, admitted that he intentionally failed to report the receipt of hazardous substances at an unpermitted facility to the appropriate federal or state agency. Sentencing for all defendants is pending.

Triple A Machine Shop: In November, 1986, Department of Toxic Substances Control (DTSC) investigators or Hazardous Materials Specialists as well as investigators of the San Francisco District Attorney's office executed a search warrant at Triple A Machine Shop in Hunter's Point. The subsequent investigation confirmed that the subject had unlawfully stored and disposed of large quantities of hazardous waste resulting from its ship repair operation. The case, which was prosecuted by the San Francisco County District Attorney's office went to jury trial in June of 1992. The company was convicted and sentenced to pay a fine of $9,265,000.

U.S. v. Weatherbee Supply (W.D. Kent.): On April 15, 1992, Weatherbee Supply, Incorporated, was sentenced pursuant to a guilty plea to one (1) count of an indictment charging felony violations of the Underground Injection Control (UIC) provisions of the Safe Drinking Water Act. The conviction resulted from the defendant's actions involving the construction and operation of unpermitted underground injection wells in Warren County, Kentucky. The court sentenced Weatherbee Supply, to pay a fine of $7,500 and placed the company on probation for 5 years.

Weatherbee Supply, Incorporated, an oil and gas production and equipment company, pled guilty in October 1991, to illegally constructing an injection well and injecting produced gas at high pressures into an oil well without first obtaining the required permit. The UIC program is designed to regulate injection wells to protect groundwater supplies from contamination. This conviction was the first and remains the only federal criminal conviction under the UIC provisions of the SDWA.

U.S. v. Weitzenhoff (D. Ha.): On October 2, 1991, in the District Court in Hawaii, a jury convicted two former government officials of the Hawaii Kai Wastewater Treatment Plant of Clean Water Act (CWA) violations. They found guilty of illegally dumping tons of partially treated sewage sludge into the waters of Hawaii, and are the first individuals convicted in Hawaii of CWA violations. Michael Weitzenhoff, the former plant manager, and Thomas Mariani, the former assistant manager, were convicted of five felony counts under the CWA, and of an additional conspiracy count, charging them with authorizing the illegal discharges. Both defendants, and a co-defendant, Charles Reeves, were employed by MEPAC, Inc. (Metcalf and Eddy, Pacific), which had been contracted by East Honolulu Community Services to operate the treatment plant. The defendants bypassed treatment facilities at night when the plant became overwhelmed. Codefendant Charles Reeves pleaded guilty to violations of the Clean Water Act and testified against Weitzenhoff and Mariani. The government alleged that the discharges occurred in 1988 and 1989 on an estimated 40 occasions, and that the discharges were secretly made at night to avoid detection. Although it was not possible to determine the exact amount discharged, an expert estimated that some 440,000 lbs. of solids were in millions of gallons of sludge discharged from the outfall located 450 yards off shore. Weitzenhoff and Mariani were sentenced on February 4, 1992, to twenty-one months and thirty-three months incarceration.

U.S. v. Westfall (N.D. OH): On December 4, 1991, Tracy Westfall was sentenced to twelve months in jail, following his guilty plea to charges that he had knowingly scrapped electric transformers containing PCBs. Westfall was charged in September 1990, in a two-count indictment charging him with illegal disposal of PCBs under TSCA, and failing to report a release of PCBs under CERCLA. Westfall pleaded guilty in August 1991, to the CERCLA felony in a plea agreement dismissing the TSCA count, which was a misdemeanor. Westfall's sentence also provided for one year of supervised release following completion of his jail term.

In May 1989, Ohio EPA received a citizen's tip that Westfall was cutting up electric transformers at his machine shop in Columbus, Ohio. Inspectors for Ohio EPA visited the shop but were initially denied access by Westfall. After an all-night surveillance, Ohio EPA gained access the next morning and found a drained PCB transformer in the shop, a cut-up transformer in a roll-off box outside the facility, PCB-contaminated paper windings in a dumpster, and several barrels of PCB oil on the loading dock. The case was jointly investigated by special agents for the EPA, FBI, and technical staff from Ohio EPA. Ohio EPA also supervised the removal of the contaminated materials.

IV. Federal Facilities Enforcement

In 1992, the Office of Federal Facilities Enforcement (OFFE) continued to ensure Federal Government compliance with all environmental laws. Recognizing the unique challenges and opportunities posed by Government facilities, federal facilities enforcement and compliance was achieved through a mix of enforcement and technical assistance activities. These activities range from the core inspections and enforcement activities which are required under every federal environmental statute to innovative pollution prevention approaches, crucial technology development, and testimony and passage of key legislation (e.g., Federal Facility Compliance Act).

The Federal government manages a vast array of industrial activities at its 27,000 installations. These activities present unique management problems from the standpoint of compliance with Federal environmental statutes. Although Federal facilities are only a small percentage of the regulated community, many Federal installations are larger and more complex than private facilities and often present a greater number of sources of pollution in all media. The Federal government is investing significant resources in addressing environmental cleanup and compliance issues at Federal facilities. With the DOD supplement enacted late in September, $8.42 billion was authorized in FY 1992 to implement over 10,000 environmental projects. The President's FY 1993 budget request provides for an additional $1.48 billion for environmental projects, bringing the total to $9.49 billion.

Enforcement/Enforcement Policy

Cleanup

At the start of EPA's Federal facilities enforcement program, EPA directed its resources largely to the completion of negotiations for CERCLA Section 120 interagency agreements. These agreements made up the cornerstone of the enforcement program addressing the 123 final and 3 proposed Federal facilities listed on the National Priorities List (NPL) at the end of FY 1992. Each agreement contained or will contain specific schedules for the study and cleanup of hazardous substances at these facilities.

During FY 1992, twelve additional Federal facility CERCLA interagency agreements (IAGs) were executed. Of the 123 facilities listed on the NPL, 104 are now covered by enforceable agreements. With the majority of these agreements completed, EPA now concentrates most of its efforts on the their implementation. The number of accomplishments reported by the Regions reflects that work has proceeded into the implementation phase. For example, the Regions have reported 45 RODs signed in FY 1992. In addition, they have reported 36 remedial design starts, 27 remedial design completions, 27 remedial action starts and 10 remedial action completions.

EPA anticipates that with more work moving through the study and cleanup phase, more issues will arise leading to disputes between EPA and Federal agencies. This past fiscal year, EPA had a major dispute arise at the Rocky Mountain Arsenal (RMA). The parties to the Rocky Mountain Arsenal Federal Facilities Agreement (RMAFFA), the Army, Shell, the Fish & Wildlife Service and EPA, reached an agreement on September 15, 1992, resolving the dispute but defers the issue of whether the Endangered Species Act, Bald and Golden Eagle Protection Act, and Migratory Bird Treaty Act are chemical specific and location specific ARARs for the Rocky Mountain Arsenal (RMA). The settlement acknowledges that these statutes apply at RMA and that they will provide a basis for establishing remediation goals which will maintain and enhance wildlife populations and their habitats at RMA.

Compliance

EPA has also increased its efforts to ensure compliance under all statues. For example, five additional Federal facility compliance agreements (FFCAs) were signed under RCRA providing a total of 86 FFCAs. Under the Clean Water Act, OFFE and Region II successfully concluded negotiations with the U.S. Army for issuance of a Region II consent order under the CWA to address long standing CWA violations at Ft. Dix, New Jersey. The compliance order requires construction of a new waste water treatment facility to serve Ft. Dix. The order also incorporates a unique sanction provision for violations of the agreements. When there is a violation, the order will require the U.S. Army to propose and fund environmentally beneficial projects subject to EPA approval.

OFFE continues to pursue federal facility compliance with the Toxic Substances Control Act (TSCA). TSCA compliance became an issue in the transfer of a Navy aircraft carrier. OFFE was requested to coordinate all the necessary parties and to address the compliance requirements under TSCA and the PCB regulations when the City of Corpus Christi, Texas acquired the legendary Navy aircraft carrier, USS LEXINGTON for use as a museum. Facilitating the transfer of the vessel required the drafting and execution of two Compliance Agreements which were executed on June 10, 1992. Also during the past fiscal year, OFFE has been engaged in negotiations with the Navy for an umbrella Compliance Agreement that addresses the unauthorized use of PCBs on all affected Naval vessels. The Agreement, which provides for maintenance, transfer and ultimate disposal of these vessels is expected to be executed in FY 1993.

EPA has also successfully enforced air requirements at Federal facilities. On March 3, 1992, Region VIII issued a Clean Air Act Section 113 Compliance Order to EG&G (Department of Energy contractor at the Rocky Flats Plant) for violations of Subpart H of the radionuclide NESHAPS. The order requires EG&G to achieve compliance with the effluent monitoring requirements of 40 C.F.R. section 61.93(b) and to complete four specified projects in order to evaluate the existing radionuclide monitoring systems for modifications to bring them into compliance. Implementation of the Rocky Flats Clean Air Act order has been very successful. As a result of this and similar actions, EPA will be increasingly exercising its enforcement authorities against contractors where appropriate.

Enforcement Legislation - Federal Facility Compliance Act

In September, Congress passed the Federal Facility Compliance Act under RCRA. The new legislation, which become law on October 6, 1992, greatly enhances state and EPA enforcement authorities. For example, states and EPA can now assess and collect penalties for violations of RCRA requirements. A key provision regarding mixed waste was also included in order to provide structure to the Department of Energy's mixed waste treatment technology development program. The new law further provides that federally-owned treatment works are eligible for the domestic sewage exclusion, that public vessels should be treated like private vessels for purposes of hazardous waste regulation, and that EPA will develop regulations governing munitions as hazardous waste.

DOD and Base Closure

There are currently 69 military installations, not including residential facilities, which are scheduled to be closed under the 1988 and 1990 base closure acts. Of these, fifteen are currently on the National Priorities List (NPL). Bases identified for closure frequently contain land and facilities that are desired for non-military use for purposes of economic development. EPA and DOD are working with states to achieve the goal of protecting public health and the environment and returning closing bases to safe and productive use as soon as possible.

Building on the efforts of the Defense Environmental Response Task Force, a multi-agency group directed by Congress to examine the environmental issues raised by base closure, EPA has worked extensively with DOD to identify and implement solutions to the questions raised. In February, EPA announced its position on the appropriate balance between the need to protect human health and the environment and the desire to make property at closing installations available for reuse. The memorandum described the point in the remediation process at which EPA believed that a transfer by deed could occur. In October, Congress amended the statute to provide for transfers by deed at a comparable point, allowing property to be deeded while long term remedial action continued.

Another major effort has been to establish procedures for the identification of uncontaminated parcels at closing bases which could be transferred by deed for re-use. The joint efforts produced a DOD guidance document, released in June which sets forth the necessary process to identify and document parcels of real property that are environmentally suitable for transfer. Under this procedure, DOD was to prepare a Finding of Suitability to Transfer (FOST) document in consultation with EPA and the State. The procedures are being reexamined in light of the role which Congress gave EPA in October. In addition, EPA is reviewing procedures DOD has proposed for transferring remediated parcels by deed and procedures for leasing parcels.

On the Regional and State level, EPA and DOD co-sponsored conferences in Sacramento, California and Boston, Massachusetts, which served as forums for improving communication between DOD, EPA, states, and other interested parties to facilitate cleanup and redevelopment of closing bases and help resolve issues affecting the base closure process.

Conference participants met to discuss acceleration initiatives, risk management, real estate and redevelopment (Boston), remediation technologies, and the development of standardized techniques relative to hazardous waste cleanups at closing military bases. Among the acceleration initiatives which offered the greatest potential for improving the cleanup and reuse process were: installation-wide joint planning; identification of cleanup standards based on land-use; concurrent review of documents; intensive in-person review of comments and resolution of issues; overlapping the phases of the CERCLA process; identification and implementation of interim actions; and improving contracting procedures.

Also during FY 1992, EPA worked to meet the dual statutory mandates to close bases and satisfy environmental concerns through balancing the competing interests of environmental and economic goals. OFFE established a Base Closure Workgroup consisting of Regional representatives to focus on crucial base closure issues. In conjunction with DOD and the States, the Workgroup established a landmark interpretation of CERCLA §120(h)(3) concerning the appropriate point for the transfer by deed of property at closing bases on the NPL, developed procedures for the transfer of uncontaminated property at closing bases, and focused on the development of methods for accelerating the cleanup process at closing military installations in order to facilitate the reuse of those installations.

DOE and the Nuclear Weapons Complex

EPA also focused on DOE and the nuclear weapons complex, and participated in an OMB review of all DOE environmental funding requirements for FY 1993. This undertaking involved EPA senior policy officials and their counterparts at DOE, DOJ, DOD, and the U.S. Army Corps of Engineers (COE). The review was designed to develop DOE's environmental budget for FY 1993 and to estimate the cost of those activities. Teams from OMB and the DOE visited various sites around the Nation and reported to OMB management on the results.

EPA also took significant enforcement actions at DOE facilities in FY 1992. For example, as part of the Hanford Tri-party agreement, DOE was to complete construction and initiate operations of a low level mixed waste laboratory on or before January 31, 1992. On October 31, 1991, DOE submitted a request to change this deadline which EPA and the State of Washington denied. DOE then initiated dispute resolution.

After protracted negotiations, the parties reached agreement on the dispute. As part of the settlement, DOE must seek funding for new expedited response actions at Hanford, and construct and operate an on-site laboratory that is smaller than the original laboratory. In addition, DOE agreed to the assessment of a $100,000 penalty. Finally, the settlement allows DOE one year to demonstrate that low level mixed waste laboratory needs can be satisfied using the combination of existing commercial laboratory capacity and the downsized on-site laboratory currently under construction.

EPA signed a letter of intent for a CERCLA agreement at DOE's Savannah River Site (SRS) in South Carolina. SRS is a DOE megasite that produces nuclear materials for defense programs (tritium is currently the primary product of the SRS). The SRS is currently divided into 64 "study areas" for purposes of investigation and remediation under CERCLA.

The Federal Facility Compliance Agreement which addresses TSCA violations at the DOE gaseous diffusions plants in Ohio, Kentucky, and Tennessee, became effective in February 1992. The agreement establishes a plan to bring the facilities into full compliance with TSCA and the PCB regulations. It also commits DOE to a clean-up schedule and requires worker safety measures in the meantime. A related case against a DOE contractor-operator at the facilities, Martin Marietta Energy Systems, was settled with payment of a $50,000 penalty and correction of the violations.

In DOE policy matters, EPA initiated dialogue on a mixed waste compliance strategy, a multi-year compliance and technology development effort to characterize and develop the technology to treat mixed waste. Preliminary strategies and recommendations have been developed for seven mixed waste and materials management issues: scrap or excess lead, scrap and residue, transportation of recyclable hazardous material, management of wastes containing only source, special nuclear or byproduct material, representative sampling of nonhomogeneous waste forms, DOE compliance with RCRA Land Disposal Restrictions and DOE compliance with RCRA technical standards. In addition, DOE and EPA have established a dialogue to address policy concerns regarding RCRA technical standards and applicability of RCRA to radioactive wastes exhibiting a hazardous characteristic.

Interagency agreements were signed at DOE facilities such as Idaho National Engineering Laboratory and Lawrence Livermore National Laboratory (Site 300). By the end of FY 1992, all nuclear weapons sites were covered under multiyear enforcement agreements with States as signatories, representing 100 - 150 billion dollars in cleanups.

Federal Agency Hazardous Waste Compliance Docket

In FY 1992, two updates to the docket were published in the Federal Register. The purpose of the docket is to identify Federal facilities that engage in hazardous waste activity or have the potential to release hazardous substances into the environment, to compile and maintain the information submitted to EPA on those facilities, and to provide a mechanism to make the information available to the public. At the end of last year, there were 1,709 Federal facilities listed on the docket, an increase of 107 from FY 1991.

Last year it was determined that privately-owned, government-operated (POGOs) facilities should be listed on the docket. POGOs were formerly excluded from docket listing, however CERCLA

defines Federal facilities as ".... facilities which are owned or operated by a department, agency, or instrumentality of the United States ....". Regions and Federal agencies were asked to identify any facilities that fit into the POGO definition for inclusion in FY 1993 and subsequent updates. Responding to Federal agencies' concerns and inquiries, OFFE provided oral presentations and training that explained the docket process, i.e., how a facility gets reported prior to listing; what each reporting mechanism (CERCLA §103, RCRA §3005, §3010, §3016) means; how Federal agencies get an opportunity to clarify a facility's status, and frequency of Federal Register updates. These presentations reinforced communications between EPA and the Federal agencies.

Pollution Prevention

EPA continues to recognize that it is far more efficient to prevent pollution problems at Federal installations before those problems actually occur. The Agency has continued to seek fundamental change in the behavior and understanding of Federal agency personnel regarding responsibilities in the environmental arena. To promote this change, EPA has continued to coordinate a number of important interagency efforts in the enforcement area to accomplish this goal. A national agreement with DOE has been initiated to significantly reduce the amount of waste being generated by Federal facilities. The agreement involves voluntary participation in TRI reporting and participation in EPA's 33/50 program.

EPA also commenced implementing the Tidewater Interagency Pollution Prevention Program (TIPPP) as a model installation demonstration program with Army, Navy, Air Force and NASA. Under the TIPPP, participating agencies are charged with developing and implementing alternative practices to reduce the wastes, emissions and adverse environmental impacts of their facilities. EPA, in conjunction with the Air Force, conducted Pollution Prevention Opportunity Assessment (PPOA) training at various Air Force installations and is developing plans for PPOA training with other Federal agencies. Additionally, the Federal Government Pollution Prevention Strategy was drafted. The strategy sets pollution prevention goals and objectives for the Federal sector by focusing on the four primary roles in which the government can make a significant impact, i.e., manufacturer and generator, consumer and large purchaser, and policy maker and regulator, and advocate for technology research, development and transfer.

Technology Development

In the area of technology development, EPA is attempting to be a leader in innovative technology research, development, and implementation. EPA established federal facilities as development centers for innovative technologies in site assessment and remediation. McClellan Air Force base is the site of a public-private partnership project. The project is a collaborative effort among EPA, the State, the Air Force and Fortune 500 companies with cleanup liabilities to measure the performance of a number of innovative technologies for site remediation. Implementation of the project is expected to lower cost, reduce time to cleanup, and increase efficiencies at Federal sites.

EPA signed the joint implementation plan for a Memorandum of Understanding (MOU) with the Western Governors Association, DOE, DOD and DOI. The implementation plan requires an examination of technology needs for environmental restoration and waste management activities in western states. Reports generated from the MOU identify barriers to technology development and address a more cooperative approach in developing technical solutions to environmental restoration and waste management problems. The key part of this MOU will be to establish a number of Federal sites as innovative technology demonstration sites in collaboration with the private sector.

Multimedia Enforcement Initiative

Achievements were made in the area of multimedia compliance and enforcement. EPA developed a comprehensive, Agency-wide program to address multimedia risk and compliance issues through comprehensive evaluations at Federal facilities. The multimedia initiative is designed to provide a holistic view of environmental compliance and emphasize prevention-based solutions to environmental compliance problems. Guidance for a FY 1993/94 multimedia initiative in all ten regions was drafted in FY 1992. EPA and the States will be conducting over 50 multimedia inspections during FY 1993 and FY 1994 and have completed pollution prevention profiles on all targeted facilities for use during inspections and in developing SEPs in enforcement settlements.

Education and Outreach

Education and outreach efforts continued during FY 1992. EPA continued to host the highly successful EPA/Federal Agency Environmental Roundtable, where representatives of approximately 50 Federal agencies meet monthly to exchange information. At the Roundtable, EPA experts discuss existing or proposed regulatory approaches affecting compliance by the other Federal agencies. The Roundtable also provides a forum for an exchange of technological information between agencies. Key topics include hazardous waste cleanup and disposal, pollution prevention, base closure, and EPA as an information resource.

EPA also continued a high-level dialogue with DOD and DOE to improve protection of the environment at installations under their control. This was accomplished through the efforts of a steering committee consisting of the Deputy Assistant Secretary of Defense (Environment), the Director of the Office of Environmental Restoration and Waste Management at DOE, the Deputy Assistant Administrator for Federal Facilities Enforcement at EPA, and seven workgroups consisting of subject matter "experts" from each of the three agencies. These workgroups developed position papers, coordinated through the Office of Federal Facilities Enforcement, that focused on removing barriers to effective compliance and cleanup programs.

Also during FY 1992, OFFE continued its pivotal national dialogue on Federal Facility Environmental Management. The participants in this effort, facilitated by the Keystone Center, met several times during FY 1992. This multi-party group includes representatives from DOD, DOE, EPA, State and tribal governments, environmental and public interest groups. The group has focused on issues surrounding the extent of citizen and regulatory agency involvement in Federal agency decision making, responses to constrained funding, and strategies for prioritizing Federal cleanups.

Beginning in January 1992, EPA and the U.S. Air Force implemented an extremely successful joint training project. The "AF/EPA Team approach to Environmental Clean-up and Risk Communication" workshop provided an opportunity for more than 500 Air Force and EPA technical, legal and community involvement participants to explore and overcome some of the corporate cultural differences and other communication barriers inhibiting effective working relationships at Federal facilities. The workshop was conducted at 16 Air Force bases in almost every EPA region in FY 1992. Efforts are being made in FY 1993 to expand the scope of this program to include DOD and the other military services. Plans are also underway to possibly develop a similar joint project with DOE.

The Federal Facilities Cleanup Leadership Council, consisting of headquarters representatives, regional officials from program offices and regional Counsels, met several times to focus on policy matters and strategic initiatives. The key national cleanup program issues of 1992 included distribution and use of oversight resources, accelerated cleanups, technology development and base closure.

V. Building and Maintaining a Strong National Enforcement Program

Program Development

National Enforcement Training Institute (NETI)

During FY 1992, NETI scored major breakthroughs in the development of a comprehensive, integrated approach to enforcement training for Federal, State and local enforcement personnel, as directed by the Pollution Prosecution Act of 1990. NETI's first year of delivering training products and services was marked by a variety of successes, culminating in the training of 3,800 environmental enforcement personnel across the Nation. The variety of training opportunities jointly provided by EPA Headquarters and Regions, the National Enforcement Investigations Center (NEIC), the criminal program at the Federal Law Enforcement Training Center (FLETC), the four regional environmental projects, and the EPA program offices have gone a long way towards meeting NETI's Congressional mandate.

Assisting in the development of NETI's overall structure and substantive programs during FY 1992, the NETI Council - a body consisting of 39 representatives from EPA (Headquarters and the Regions), the NEIC, the U.S. Department of Justice (DOJ), State and local governments and their representative organizations, and academia - has met semi-annually and provided invaluable input to the NETI Executive Director. In addition to its twice yearly deliberations as a body of the whole, the NETI Council has functioned throughout the year by means of six working NETI Subcommittees, as well as a seventh Coordinating Subcommittee (consisting of the chairs of the other six Subcommittees) to guide the work of the various groups. The working Subcommittees have focused their attention on the areas of Curriculum Development, Faculty Development, Training Delivery, Finance, Communications and Outreach, and Evaluation.

Complementing the work of the NETI Council and its Subcommittees in FY 1992, the six NETI Standing Committees on Curriculum Development focused their collective expertise on the development of the core curricula for the six enforcement professional disciplines as outlined in the Pollution Prosecution Act, namely, inspectors, civil investigators, prosecutors, criminal investigators, civil attorneys, and technical experts. Membership within these six Standing Curriculum Committees includes enforcement personnel from the above six disciplines.

With respect to the substantive training efforts of NETI in FY 1992, the year was marked by the delivery of 52 training courses by EPA Headquarters staff, ranging in topics from Pollution Prevention to Superfund and RCRA Attorney Orientation to Enforcement Negotiations Skills. Additionally, NETI-HQ piloted the Basic Enforcement Course in May of 1992. This new training approach emphasizes team-building and a broad understanding of the roles represented in the enforcement process. Thirty-six enforcement personnel, representing all media and levels of government nationally, participated in this two-week event.

NETI training also was offered by the EPA criminal program at the FLETC in Glynco, Georgia. Training courses on topics ranging from Environmental Investigations to Special Agent In-Charge were delivered, training a total of 378 enforcement personnel, including 50 tribal representatives.

With the dedication of the a state-of-the-art NETI training facility in Denver in September 1993, NETI accomplished the first phase of its facilities acquisition. Since the Summer of 1993, 241 enforcement personnel have been trained at the facility by NETI staff in topics ranging from Multi-

Media Investigations to Enforcement Techniques for Laboratory Personnel. With the anticipated opening of a Headquarters NETI training center in the Washington, D.C. area, in FY 1994, NETI's two training facilities will serve as an important foundation for establishing NETI as a premiere training network.

In addition to EPA-sponsored training, NETI training was offered by the four regional environmental projects, namely, the Northeast Environmental Enforcement Project, the Southern Environmental Enforcement Network, the Midwest Environmental Enforcement Association, and the Western States Hazardous Waste Project. A variety of training courses in topics ranging from Prosecuting Environmental Crimes to Case Management Skills to "Train the Trainer" courses resulted in the training of 612 state and local enforcement personnel. Additionally, ten conferences were sponsored by the projects, which were attended by 630 state and local enforcement personnel. (For further information contact OCAPO)

Penalty Calculation Models (BEN and ABEL)

The BEN model, which is used to calculate a violator's economic gain from noncompliance, was used over 4,800 times in FY 1992 by the EPA and 41 States. The ABEL model, which is used to evaluate violators' claims that they cannot afford to pay for compliance costs or civil penalties, was used over 1,000 times. In order to better support the Superfund program, the Office of Enforcement developed Superfund versions of both models in FY 1992. The Superfund version of BEN, CASHOUT, determines the present value of Superfund clean-ups even when the future costs are 30 years into the future. The present value figure is used in de minimis settlements. Superfund ABEL evaluates PRP claims of inability to afford clean ups.

The models have had a dramatic impact on the penalty assessment process. From FY 1977 to FY 1984, the Agency's total assessed civil penalties averaged about $6 million per year. Since the introduction of the BEN model in FY 1985, the total assessed civil penalties have averaged about $36 million per year. The Office of Enforcement provides consultation help on inquiries and conducts training courses on the models in the Regions, Headquarters and the States. (For further information contact OCAPO.)

Supplemental Environmental Projects (SEPs)

As part of its overall effort to develop qualitative measures of environmental enforcement (in addition to the traditional emphasis on the number of enforcement actions taken) the Office of Enforcement asked the Regions to provide estimates of the environmental and economic impact of supplemental environmental projects (SEPs) in enforcement settlements contained in FY 1992 judicial and administrative enforcement cases. The categories of eligible SEPs are pollution prevention, pollution reduction, environmental restoration, environmental auditing, public awareness, and targeted support to State and Local Planning Agencies to help them carry out their responsibilities under EPCRA. SEPs provide additional environmental benefits beyond those which can be required by injunctive relief.

The preliminary analysis of FY 1992 settlement data indicated that the Regions negotiated 224 Supplemental Environmental Projects (SEPS) during FY 1992. Approximately 50% of the SEPs were in the category of pollution reduction (primarily TSCA cases) and about 30% of the SEPs were in the pollution prevention category (primarily EPCRA cases). The total estimated value of the defendants/respondants commitment to undertake the environmental activity secured through all of the SEPs was over $48 million.

Most of these pollution prevention-oriented settlements enhanced source reduction through chemical substitution (e.g., replacing a high toxic solvent with a less toxic product) or process changes (e.g., replacing chemical cleaning systems with mechanical ones). About one-half of the settlements involve chemicals on the Agency's "33/50" reduction list, including 1,1,1 TCE, toulene, MEK, xylene, and chromium. The total cost to implement the pollution prevention-oriented SEPs was approximately $24 million.

In March 1992, Deputy Administrator F. Henry Habicht II, as chairman of the Agency's Pollution Prevention Senior Policy Council, charged an Agency-wide workgroup with the task of developing recommendations on how to expand the number of pollution prevention SEPs negotiated by all medi programs. The workgroup reported back with a number of policy, institutional and technical recommendations. One of the major recommendations involved more specific enforcement-oriented training to both legal and technical enforcement personnel. This training should emphasize the types of pollution prevention technology which is most appropriate to the types of facilities regulated by the media programs and the types of violations encountered. The SEP Workgroup developed a "needs survey" of training that was sent to the Regions to help facilitate this effort. The Agency is currently reviewing the Regional responses to assess the most appropriate type of training. (For further information contact OCAPO.)

Total Quality Management

As the result of the groundwork laid during FY 1992, the Office of Enforcement is in a position to to make the tools and philosophy offered by Total Quality Management (TQM) an integral part of the activities of the enforcement program in FY 1993. Functioning components of the TQM rollout include a comprehensive schedule of basic training, which has already provided instruction in TQM principles to 80 per cent of Headquarters OE personnel, an internal Quality Improvement Board, which helps steer the training and implementation process, and the completion of several TQM projects. The potential now exists to use TQM in the planning and execution of multi-media initiatives and other mission-oriented issues, well as for improvements in customer relationships and general administrative operations, in order to produce a more effective enforcement program. (For further information contact OCAPO.)

Intergovernmental/International Enforcement Activities

International Enforcement Accomplishments

In FY 1992, EPA was involved in several activities to enhance enforcement efforts internationally. EPA co-sponsored the second International Conference on Environmental Enforcement in Budapest, Hungary, on September 22-25, 1992, where over 140 representatives from 38 different countries and international organizations met to exchange expertise and experiences on enforcement philosophies and approaches. The Conference focused on enforceability of environmental requirements, development of compliance monitoring and enforcement response capabilities, organizational options for structuring compliance and enforcement programs, ways to address economic and ownership issues in an enforcement context, citizen involvement in enforcement and the role of public disclosure in encouraging compliance as well as applications to hazardous waste disposal and transport issues.

In FY 1992, EPA also introduced and delivered the Principles of Environmental Enforcement training course to governments worldwide, including Poland, Hungary, Ukraine and the United States. The course has been enthusiastically received internationally and has been requested in Turkey, Brazil,

Mexico and Venezuela. The course presents basic principles for designing and implementing an effective enforcement program in any cultural setting and is designed for an international audience. Facilitators are trained in each country to continue to deliver the course on an on-going basis.

In July 1992, the Office of Enforcement was represented at ECOBRASIL '92, the technical fair held in Sao Paulo, Brazil in conjunction with the United Nations Conference on Environment and Development. OE contributed to Agenda 21 and has continued to promote enforcement efforts since the Conference. Proposed language which assures that compliance and enforcement programs are part of environmental management systems around the globe was successfully adopted into Agenda 21. (For further information contact OCAPO)

Enforcement Actions Taken Against Polluters On U.S.-Mexico Border

EPA announced, June 3, 1992, the first enforcement actions in the United States resulting from efforts outlined in the Integrated Environmental Plan for the Mexican-U.S. Border Area. All of the state and federal actions involved violations of U.S. environmental laws in the border area, or violations of U.S. laws governing transboundary shipments of hazardous wastes or toxic substances. U.S. federal enforcement resulted in two criminal indictments and 10 civil actions for violations of federal air, toxic substance, community right-to-know, and waste laws.

Also on June 3, the Mexican government announced environmental inspection and supervision activities in Mexican states along the U.S. border to verify compliance in the maquiladora industry with Mexico's environmental laws and regulations. As a result of these activities, the Secretariat of Social Development (SEDESOL), Mexico's environmental agency, ordered the shut down of eight noncomplying facilities and the forfeiture of surety bonds posted by an additional four companies. Notices of infractions were issued against another 22 facilities.

The U.S. federal criminal indictments were handed down in two cases that involved the illegal exportation of hazardous wastes to Mexico. One of the cases was developed as a result of cooperative efforts by customs officials of both countries, with assistance from a number of U.S. local, state and federal environmental and law enforcement agencies. A tip-off by Mexican customs officials, after refusing an alleged bribe at the border crossing, resulted in the indictment of Sbicca of California, Inc., of El Monte, California, and three of its employees who were transporting hazardous waste into Mexico illegally. In the second case, Ignacio Lopez, the operator of a Calexico, California, transportation company was charged with illegally shipping a number of different types of hazardous waste into Mexico. The case was investigated with the cooperative assistance of Mexico's environmental agency, as well as the U.S. Customs Service, EPA, and the Imperial County Health Department.

Eight of the civil actions were recently filed EPA administrative enforcement actions, and two were judicial actions brought by the Department of Justice on behalf of EPA. In addition, California took four actions, and Arizona filed one action, enforcing air and hazardous waste laws in the Mexican border area of these states.

The U.S. federal civil judicial actions, which seek up to $25,000 per day for each violation, were filed against Apache Nitrogen Products, Inc., Benson, Ariz., and Arizona Electric Power Cooperative Inc., Cochise, Ariz. The EPA administrative actions, seeking nearly $1.7 million in penalties, were taken against D.M.I. Aviation, Tucson, Ariz.; RhoChem Corp., Inglewood, Calif.; Scripto-Tokai Corp., Fontana, Calif.; Apex Microtechnology Corp., Tucson, Ariz.; and four firms in El Paso, Texas, Swift-Eckrich Co., Consumer Ice Co., Adobe Industries, and El Paso Wire, Inc. (For further information contact Region DO)

International Environmental Enforcement Training

In FY 1992, NETI developed and delivered two international environmental enforcement training programs. In the Fall of 1991 the President of Mexico announced that SEDESOL (Mexico's EPA) was hiring 200 new environmental inspectors whose responsibility would be to inspect the approximately 2,200 maquiladora (i.e., manufacturing) facilities that operate in Mexico along the 2,000-mile Mexico-U.S. Border and which are typically owned by U.S.-parent corporations. NETI was asked to design, develop and deliver a quality training course for these inspectors during FY 1992.

By the end of September 1992, the NETI had met this considerable challenge when it completed four separate training sessions for these 200 Mexican inspectors at the following in-country locations: Tijuana, Ciudad Juarez, Mexicali and Matamoros. This week-long training provides instruction in Mexican environmental laws and regulations; health and safety techniques for the individual inspector; EPA inspection procedures and protocols; intensive, hands-on instruction in various manufacturing processes (e.g., printed circuit boards, electroplating, furniture finishing, and plastic injection molding); and, finally, site visits to two local maquiladora facilities. (For further information contact NETI)

National Reports on FY 1992 EPA and State Performance

Timely and Appropriate Enforcement Response

The Timely and Appropriate Enforcement Response concept seeks to establish predictable enforcement responses by both EPA and the States, with each media program defining target timeframes for the timely escalation of enforcement responses. Tracking of timeframes commences on the date the violation is detected through to the date when formal enforcement action is initiated. The programs have also defined what constitutes an appropriate formal enforcement response based on the nature of the violation, including defining when the imposition of penalties or other sanctions is appropriate. Each year OE compiles an end-of-year report which summarizes the performance by each of the media programs. (For further information contact OCAPO)

National Penalty Report

Each year, EPA produces a comprehensive analysis of the financial penalties EPA obtained from violators of environmental laws. The report contains an Agency-wide overview for each program and compares annual performance with historical trends. (see Appendix)

Summary of State-by-State Enforcement Activity for EPA and the States

Each year, EPA assembles an end-of-year report which summarizes quantitative indicators of EPA and State enforcement activities on a State-by-State basis. The FY 1992 report is scheduled for publication in May 1993. (For further information contact OCAPO)

Enforcement Four-Year Strategic Plan

As part of EPA's Agency-wide strategic planning process, the Office of Enforcement developed a comprehensive enforcement plan with both media-specific and cross-media components. The

Enforcement Four-Year Strategic Plan outlines the capabilities which will be needed to enhance enforcement efforts for the future. Several of these efforts are now being implemented on a pilot basis, while others will be fully developed over the next several years. The Strategic Plan is a sound guide for the Agency's future enforcement efforts. (For further information contact OCAPO)

Enforcement in the 1990's

The decade of the 1990's represents a new era in environmental enforcement as the Federal, State and local governments and citizen's groups better combine their resources to vigorously enforce the nation's environmental laws. The strategic planning reflected in the Enforcement Four-Year Strategic Plan set themes and directions for the Agency's enforcement program. In FY 1991, the Office of Enforcement, other EPA personnel in Headquarters and the Regions, and, in some instances, non-EPA personnel, produced reports, collected in the Enforcement in the 1990's Project, which complement the earlier Strategic Plan. These final reports provide recommendations for action in six discrete areas: measures of success, the State/Federal relationship, environmental rulemaking, innovative enforcement techniques, compliance incentives, and the role of local governments.

The 1990's Project reports establish an agenda that points in new directions and identify numerous action steps for EPA staff at Headquarters, the Regions, the States, the local governments, and citizens. EPA has begun to implement many of these, and more will be undertaken in the near future. The Enforcement in the 1990's Project provided valuable, practical ideas whose implementation will strengthen significantly the Agency's enforcement program. (For further information contact OCAPO)

Clean Air Act

Operating Permits Regulation

The new Clean Air Act Title V Operating Permits program should significantly benefit future enforcement of this important legislation in several ways. The permit will set forth in one enforceable document all of the provisions of the Act which apply to that particular source. Once issued, these permits may only be challenged for a limited period of time in state court. After this time, the terms and conditions of these new permits may not be questioned in enforcement actions. This requirement should increase compliance by the regulated community because each source will know exactly what its obligations under the Act are, and it should ease enforcement at both the state and federal level when violations are identified because there will be no disputes over which provisions of the Act apply to the particular source.

In addition, under the new permit program state and federal enforcement personnel will be receiving significantly more information regarding the permittee's compliance status. Each permit must contain provisions sufficien. to ensure its terms and conditions are practically enforceable as well as legally enforceable. Each permittee will be required to periodically monitor its compliance and report the results of that monitoring. Each permittee will also be required to periodically certify its compliance with the terms and conditions of its permit.

Finally, for a state to have an approvable, delegated permits program, the state will be required to have authority to assess civil penalties of up to $10,000 per day per violation. This is a significant increase for many states and will strengthen state enforcement efforts. (For further information contact OE-Air)

Acid Rain Regulations - Market Based Incentives

The acid rain regulations, becoming effective in 1995, will allocate to each affected unit a set amount of allowances, each allowance to represent a ton of allowable sulfur dioxide emissions. Units are free to buy and sell allowances. Emissions reductions achieved through reduced operation of the unit (as opposed to reductions achieved through installation and operation of emissions controls) result in the forfeiture of allowances. At the end of the compliance year, a unit's total annual emissions may not exceed the number of allowances the unit holds in its account. A unit with excess emissions must pay a penalty of $2,000 per ton of exceedance (adjusted for inflation from November 15, 1990) without demand from EPA, and will have its allowances for the next near reduced by an amount equal to its exceedances. Because accurate measurements of a unit's emissions are essential to the integrity of this program, EPA expects to direct most of its enforcement effort to monitoring, recordkeeping, and reporting violations. (For further information contact OE-Air)

FY 1992 Pollution Prevention Activities

EPA is seeking to integrate Pollution Prevention (P2) as a work ethic in all its activities in accordance with the Pollution Prevention Act of 1990. P2 is defined as pollution reduction and prevention of the release of hazardous substance at the source or the elimination of pollution through efficient use of energy, water, or resources.

In FY 1992, the Stationary Source Compliance Division (SSCD) represented OAR in the "Agency-wide Supplemental Enforcement Program (SEP)/Enforcement Pollution Prevention Workgroup". The Deputy Administrator organized the workgroup to spur the Agency into incorporating P2 project results into its routine enforcement activities. An important outgrowth of this was SSCD's formation of an "Air Compliance and Enforcement P2 Workgroup" comprised of Headquarters and Regional compliance and enforcement personnel. During FY 1992, the workgroup worked to enhance team-building. (For further information contact SSCD)

Inspection Training Delivery Demonstration

In FY 1992, the EPA-funded Air Pollution Compliance Training Demonstration Center at Rutgers University completed its first year of inspector training. This three-year demonstration for 15 states/locals and EPA in Regions I, II, and III is a turn-key cooperative agreement covering communications, delivery, and evaluation. It included 24 weeks of inspector curriculum, off-site training in Region I Boston, and industry training. The training which, meets EPA Order 3500.1 requirements, is organized into basic/safety, inspection/monitoring, and program specific courses and is available quarterly. A user group was formed and recommendations were made to improve the course materials. More off-site and satellite training are being considered for FY 1993.

The Inspector Training Delivery Demonstration program is a multi-year, cooperative agreement between several colleges and environmental occupational health sciences institutes. The program was developed to demonstrate and deliver quality inspector training to state, local, and EPA compliance staff.

In FY 1992, a California Air Resources Board project (CARB I) was initiated using California Air Resources Board staff and retired personnel for on-site compliance training with basic course videos in 14 states/locals and EPA in Regions VIII, IX and X. A Senior Environmental Employee Program cooperative agreement was developed with the National Council On Aging to provide experienced

trainer support. A successful project may prompt broader nationwide application, a higher training level, and/or state train-the-trainers programs.

A proposal by the National Association of Attorneys General (NAAG) was approved. It included technical assistance and training on provisions of the Clean Air Act (CAA). It involved state legal staff in EPA efforts to develop CAA enforcement program policies and to identify issues concerning the enforcement of market-based regulatory programs. (For further information contact SSCD)

Lead NAAQS Attainment Strategy

The Lead National Ambient Air Quality Standards (NAAQS) Attainment Strategy is part of the Agency Lead Strategy which is intended to lower human exposure to lead. Due to the effectiveness of the Lead NAAQS Attainment Strategy, the Regional Lead Coordinators were able to identify three additional sources in non-attainment areas. The number of sources being tracked increased from 29 in FY 1991 to 32 in FY 1992. Local, state and Regional offices were able to identify the problem sources early and initiate enforcement action with the use of the monitoring data from the strategy.

Since the strategy was implemented, 10 consent decrees have been completed and six additional consent decrees were negotiated. On the regulatory side, the Regions are undertaking or considering nonattainment designation and SIP calls for five areas with lead problems. (For further information contact SSCD)

Rule Effectiveness

Rule Effectiveness (RE) is the method by which regulators determine how effective an environmental statute is in reducing source pollution. In FY 1992, SSCD initiated revisions to the RE Protocol. The revisions emphasized state involvement in the program and addressed calculation methods and application of the results of the studies to challenge the 80 percent effectiveness default value in the ozone strategy. Four RE studies were completed in FY 1992: "Emissions from Perchloroethylene Dry Cleaners" (Region I); "Surface Coating of Paper" (Region II); "Leak Tight Certification of Gasoline Tank Truck" (Region VII); and "Can and Coil Coating Industry" (Region IX). (For further information contact SSCD)

Compliance Monitoring Strategy

The revised Compliance Monitoring Strategy (CMS) provides a more flexible and systematic approach for determining state inspection commitments. The strategy recommends the development of a comprehensive inspection plan that identifies all sources committed to be inspected by the state agency during its fiscal year. In order to assist states in developing comprehensive enforcement plans, SSCD provided a computer program and supported the Inspection Targeting Model (ITM).

This computer program allowed states to consider quantitative factors, qualitative factors, emissions, and past compliance history, which is important to program inspector's observations when ranking sources for inspection. States could then reflect their available resources in ITM in order to finalize the list of targeted inspections. In FY 1992, 20 States used ITM. (For further information contact SSCD)

Early Reductions-State Delegation

Under the Early Reductions Programs, a source must submit an enforceable commitment to EPA or its delegatee, pledging to achieve the required emission reductions from their baseline emission to qualify for a six year extension of compliance with Maximum Achievable Control Technology (MACT). The commitment would be enforced under 18 USC 1001 or under Section 114 of the CAA, and would be policed by random inspections performed by the National Enforcement Investigations Center (NEIC). After 1994 the commitments will be integrated into either a specialty Title V permit or a letter of compliance issued by EPA. A draft Early Reductions Program–State Delegation Manual was prepared to combine some of the requirements currently used by various programs. (For further information contact SSCD)

Significant Violator/Timely and Appropriate Guidance

The Significant Violator Program encourages effective prioritization of compliance and enforcement activity toward sources posing the greatest environmental threat. In the second quarter of FY 1992 a revised Significant Violator (SV)/Timely and Appropriate (T&A) Guidance was issued and implementation is proceeding. All of the Regions and states are expected to fully implement the SV/T&A guidance by the beginning of FY 1993. The Guidance has: 1) encouraged a greater degree of team building and cooperative resolution of Significant Violators by all responsible Agencies, 2) encouraged agencies to give priority attention to those violators which they believe are most environmentally important, 3) permitted an increased degree of agency flexibility in identifying and addressing Significant Violations, and 4) provided a more accurate picture of the time and resources necessary to bring and maintain major sources into continuous compliance.

Under the revised guidance the universe of sources has expanded. The SV universe expanded because the guidance now incorporates the 1990 Clean Air Act definition of a major air pollution source, and because the Guidance now encompasses asbestos sources and sources in attainment areas. This expansion in the SV universe resulted in an approximate 25 percent increase in the number of SV's identified and addressed in the fourth quarter of FY 1992. SSCD expects the number of SV's identified and addressed to continue to increase in Fiscal Year 1993. (For further information contact SSCD)

Volatile Organic Compounds (VOC) Technical Agenda Activities

During FY 1992, SSCD and the Regional Offices identified and initiated 10 "Technical Agenda" projects for VOCs, Air Toxics and Radionuclides. These projects were selected after Regional surveys identified guidance and support needed to assist Regional and state/local agencies ability to enforce the air program.

As a result, SSCD published seven VOC inspection reports including procedures for sampling and analysis, test observations and compliance checklists; completed development of 23 plant specific inspection manuals for CFC sources and presented a CFC training course; finalized guidelines addressing the confined space entry issue for storage vessels subject to Benzene NESHAP (40 CFR 61, Subpart Y); and completed Regional and OAQPS review of inspection manuals for the Benzene NESHAP Coke By-Product Recovery Plants (40 CFR 61, Subpart L), Storage Vessels (40 CFR 61, Subpart Y) and Transfer Operations (40 CFR 61, Subpart BB). (For further information contact SSCD)

Stratospheric Ozone Protection Compliance Program

Clean Air Act amendments requiring recycling of ozone depleting refrigerants went into effect during FY 1992. On January 1, 1992, service stations that repair automobile air conditioners are required to recover and recycle the refrigerant. To implement the regulation, guidance was prepared and over 500 inspections were completed. Compliance is good and a complete analysis of inspection results will be completed in FY 1993.

Effective July 1, 1992, venting of refrigerant is prohibited during the maintenance, service, repair or disposal of air conditioning or refrigeration equipment (except automobile air conditioners). SSCD issued interim enforcement guidance to assist the Regions in investigations and enforcement actions. Also during FY 1992, EPA settled the largest penalty case for violations of the import controls on ozone depleting chemicals. (For further information contact SSCD)

Wood Heater Program

During FY 1992, a wood heater Random Compliance Audit (RCA) program was developed and implemented to strengthen implementation of the New Source Performance Standards for Residential Wood Heaters. The RCA program requires manufacturers to send production models of wood heaters to the laboratory that originally conducted the certification tests. If the appliance fails to meet the emission standard, certification for that model line can be revoked.

To implement this program, a RCA guidance document was prepared. The guidance describes the procedures for selecting, testing and resolving problems during the course of audit testing. The guidance was released to the regulated community and they were given an opportunity to comment on it. During the year, two tests were completed, both of which passed the RCA. (For further information contact SSCD)

Clean Air Act - Mobile Sources

Administrative Hearings

Pursuant to the 1990 Clean Air Act Amendments, which provide for the use of the administrative process for certain mobile source violations, the Field Operations and Support Division (FOSD) has developed procedures, finalized in early FY 1993, to conduct administrative hearings. Similar to other EPA Offices, FOSD will be using the Rules of Practice Governing the Administrative Assessment of Civil Penalties.

During the past year, FOSD coordinated with the Office of Enforcement, the Department of Justice, and the Office of Administrative Law Judges in developing an internal policy for the administrative process. FOSD will continue its policy of issuing Notices of Violation to violators prior to the issuance of an administrative complaint and hopes to continues its excellent rate of settlement using the NOV process to reduce litigation. (For further information contact FOSD)

Diesel Desulfurization

The final rule to reduce sulfur and regulate other properties in diesel fuel was published in the Federal Register on May 7, 1992, and takes effect October 1, 1993. This rule was issued to protect new

devices installed on diesel engines to reduce particulate emissions and to provide other air quality benefits. The new standard requires diesel fuel for on-road use to have a cetane index of at least 40, or a maximum aromatic content of 35 volume percent, and a sulfur percentage, by weight, no greater than 0.05 percent. FOSD has begun the extensive process of developing procedures and policies to implement a nationwide program to enforce these requirements. FOSD is presently preparing a question and answer document to be distributed at a public meeting planned for May 1993. In addition, FOSD is developing an enforcement strategy and will train contractors and EPA personnel on diesel desulfurization regulations and inspections this summer. (For further information contact FOSD)

Enforcement Provisions for Reformulated Fuels and Anti-dumping Provisions of the Clean Air Act Amendments of 1990

The reformulated gasoline and anti-dumping rulemaking process continued during FY 1992. FOSD continued its role of developing and drafting the enforcement provisions of these requirements. The most significant event was the April publication of the Supplemental Notice of Proposed Rulemaking, formally proposing the reformulated and anti-dumping program that resulted from the Regulatory Negotiation conducted in 1991. The reformulated gasoline regulations will result in the reduction of VOC, NOX and toxics emissions by 15% in the worst ozone nonattainment areas in the country. The anti-dumping regulations will ensure that the quality of gasoline in the remainder of the country does not degrade from its 1990 levels.

The general structure of the proposed programs is the result of an extensive negotiated rulemaking process comprised of representatives of all segments of the industry, environmental groups, state and local agencies and various federal agencies, including DOE, OMB nd EPA. However, due to a presidential decision regarding the treatment of ethanol in reformulated gasoline, m[illegible] of the enforcement provisions have to be reproposed. This reproposal will be issued by March 15, 1993, with a final no later than September 15, 1993. The program will be effective January 1, 1995. (For further information contact FOSD)

Detergent Additized Gasoline

The Office of Mobile Sources established a workgroup and has been working extensively to draft the new enforcement provisions prescribed by the Clean Air Act Amendments of 1990 for detergent additized gasoline. The purpose of the detergent additized gasoline regulations is to prevent intake valve and ported fuel injection deposits from occurring in gasoline engines. These deposits have been shown to cause increases in hydrocarbon (HC) emissions. A proposal and final rule are due out within the next year. The detergent additized gasoline regulations will be effective beginning January 1, 1995. (For further information contact FOSD)

Defeat Device Prohibition

The Clean Air Act Amendments of 1990 established the prohibition against the manufacture or sale of defeat devices. Section 203(a)(3)(B) of the Act prohibits any person from manufacturing, selling, offering to sell, or installing any part or component intended for use with, or as part of, any motor vehicle, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle in compliance with the regulations at 40 C.F.R. Part 86, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use. FOSD is developing a policy to define "defeat devices," provide guidance to the industry in this area, and aid in enforcing the new provision.

The legislative history associated with the prohibition against defeat devices cites "test pipes" (i.e., catalytic converter replacement pipes) and programmable read-only memory (PROM) chips as examples of such devices. FOSD settled several enforcement actions for the manufacture and/or sale of test pipes under this provision in 1992. As a result of FOSD's aggressive enforcement action, all the known manufacturers of test pipes have ceased such production. FOSD is currently investigating PROM chips manufactured by several different companies, including an extensive test program to determine their effect on emissions. (For further information contact FOSD)

Volatility Enforcement Program

FOSD conducted approximately 11,000 volatility inspections in FY 1992, issued 73 Notices of Violation for volatility violations, and settled 29 volatility cases during FY 1992, collecting $48,071 in civil penalties and $31,046 in alternative payment projects. A significant number of the NOVs issued in FY 1992 were for violations discovered toward the end of the fiscal year. These cases will be concluded in FY 1993.

The number of NOVs issued in FY 1992 for volatility violations is a substantial increase over the number issued in FY 1991. The increase in the number of violations is attributable, in large part, to the more stringent standards imposed under the Phase II Volatility Regulations which became effective during the 1992 volatility season, and to misdeliveries of higher RVP gasoline to ozone nonattainment areas requiring lower RVP gasoline. EPA targeted its investigative efforts during FY 1992 in those ozone nonattainment areas where the potential for misdelivery was greatest. (For further information contact FOSD)

Aftermarket Catalytic Converter Policy

During FY 1992 there was an increase in compliance with respect to the installation of aftermarket catalytic converters. FOSD attributes this increase in compliance to its aggressive enforcement program, which includes the investigation of repair shops to determine compliance, the review of aftermarket catalytic converter warranty cards, the issuance of NOVs, and education of both the public and the regulated community. EPA tampering survey data indicates that the need for catalytic converter replacement is as high as 4% of the national fleet. Because of this substantial need for catalytic converters, the demand for new aftermarket catalytic converters has steadily increased in recent years. (For further information contact FOSD)

Clean Water Act

Review of Citizen Suits

The Office of Enforcement continues to review water enforcement cases filed by citizens to ensure that these cases are consistent with public policy. In FY 1992, the Office of Enforcement reviewed approximately 190 60-day notice letters filed informing the Agency and the violator that citizens were going to file suit. EPA also reviewed approximately 30 consent decrees from citizens bringing suits for violations of the Clean Water Act, Safe Drinking Water Act, or Ocean Dumping Act. EPA, in consultation with the Department of Justice, reviews Clean Water Act citizen suit settlements to determine whether the penalties, supplemental environmental projects, and injunctive relief achieve CWA goals, promote compliance, follow regulatory requirements, and avoid problematic judicial precedents. If the proposed citizen suit settlements re considered deficient in any of these respects, the

EPA review team works with the parties to negotiate a better result. If negotiation fails, the team may file comments or objections with the court, or file an amicus brief on behalf of one of the parties setting forth the position of the United States. (For further information contact OE-Water).

Issuance of Revised Clean Water Act Enforcement Policy Compendium

During FY 1992, EPA's Clean Water Act Enforcement Policy Compendium was revised and made available to EPA Regional offices and to the public. The indexed four volume Compendium contains copies of all current and publicly-available EPA water enforcement policies relating to the NPDES and pretreatment programs under the Clean Water Act. (For further information contact OE-Water).

Report on Clean Water Act Enforcement Mechanisms

On March 18, 1992, EPA released the Report to Congress on Clean Water Act Enforcement Mechanisms. This Report was required by Congress pursuant to Section 314(b) of the Water Quality Act of 1987, P.L. 100-4. The report analyzes the various enforcement options available to the Agency under the Clean Water Act and considers how the Agency's various Clean Water Act enforcement programs are implemented. In the course of developing the Report, an Agency workgroup also considered the merits of several possible revisions to the Clean Water Act and developed a discussion paper analyzing possible amendments to the Clean Water Act. This discussion paper was transmitted to Congress by the Agency contemporaneously with the Report to Congress on Clean Water Act Enforcement Mechanisms. (For further information contact OE-Water).

Proposed 40 CFR Part 28 Regulations Adopted as Guidance

Proposed 40 C.F.R. Part 28, which is to govern a number of Agency non-APA administrative penalty proceedings, was adopted as guidance for §309(g) Clean Water Act Class I proceedings, beginning on November 1, 1991. This Part 28 guidance replaces 1987 guidance. The Part 28 procedures were also applied as initial guidance in CWA Class I spill cases, beginning in December 1991. The Agency will use its experience with proposed Part 28 in these programs, as well as the comments it received on the proposed regulation, in determining the final form of 40 C.F.R. Part 28. (For further information contact OE-Water).

NPDES "Minors" Workgroup

EPA's management priority in the past has been with the approximately 7,100 major NPDES permitters. Currently, an effort is underway to assess the current management approach relating to the approximately 57,000 minor NPDES permittees. The Office of Wastewater Enforcement and Compliance is concentrating on: (1) defining the universe of minors; (2) defining and assessing the risk caused by minors; and (3) assessing the current Regional/State practices in handling minors. A work group has been formed to address these major areas. (For further information contact OWEC).

Statistical Assessment of National Significant Industrial User Noncompliance

In FY 1992, the Agency released the final report of an EPA evaluation of compliance by significant industrial users with pretreatment requirements. EPA undertook this study to independently determine with known statistical confidence the level of significant noncompliance (SNC) by significant industrial users of sewage treatment plants. The study evaluated noncompliance at 640 industrial facilities discharging into 60 Publicly Owned Treatment Works (POTWS) across the country. The

central purpose of the study was to establish baseline data using a definition of significant noncompliance which EPA adopted in July of 1990. The study results will be used to measure future trends in industrial compliance. The most significant result described in the report is that 54% of the 30,000 significant industries nationwide would have been in significant noncompliance with either effluent limits or reporting requirements, or both, using the new Federal definition. The study did not attempt to identify whether or when industries returned to compliance during the year, either voluntarily or through enforcement. (For further information contact OWEC).

Electronic Reporting Pilot

To reduce the reporting burden on permitted facilities and improve the quality of information submitted, OWEC is actively exploring options available for electronic submission of Discharge Monitoring Reports from permitted facilities into the Permit Compliance System.

In FY 1992 the Metropolitan Water Reclamation District of Greater Chicago in Region V, the first pilot to test electronic data transfer was successful, resulting in automated reporting of data for four months directly to PCS. Two additional pilots, one in Region V and the other in Region VI are underway. OWEC is developing an evaluation approach so that the results of these pilot can serve as the foundation for future management decisions for the remaining 7,100 major facilities in PCS. The results may also provide insight into how to address the larger universe of minor permitted facilities. (For further information contact OWEC).

PCS Data Quality and Loading Analyses Review

A data quality review has been completed on all Water Enforcement National Database (WENDB) data elements within the Permit Compliance Database (PCS). The goal of this effort is greater standardization of data definitions and values.

In addition, a nationwide PCS data quality check of measurement data for ten selected parameters has been completed. Problems with the data have been identified and procedures to clean it up are being developed.

Complete and accurate data is necessary to determine accurate pollutant loadings to waters of the U.S. Loadings is being identified by the Agency as an indirect environmental indicator and will over a period of time provide an indication of the impact of permitted discharges upon our nation's waterways. Loadings data in conjunction with other environmental indicators will provide regulators and the public information in order to make assessments of the health of streams and whether improvement or deterioration has occurred. Finally, loadings may provide a way to identify the most significant sources of pollutant which potentially may be addressed through enforcement. (For further information contact OWEC).

Latitude/Longitude Coordinates in PCD

OWEC has completed the first phase of a project to generate and enter latitude and longitude coordinates for majors and selected minors into PCS. Currently, all but 1,000 majors have been entered into the database. This effort will increase the usefulness of PCS data in managing the NPDES program. This information is key to linking discharge data to stream reaches and to mapping/targeting pollutant dischargers. The coordinates will also provide new opportunities to interface with other EPA systems which have these mapping capabilities. (For further information contact OWEC).

National Pretreatment Enforcement Initiative

On October 15, 1992, the Agency announced the results of its third enforcement initiative to address noncompliance with pretreatment requirements by municipalities and industrial users. In a meeting with the trade press and through a "Note to Correspondents", the Agency announced that Federal, State and local governments had combined to target 354 noncompliers for more than $18.6 million in penalty actions since May, 1991. In addition, six separate actions against industrial users were filed in Federal court on the day of the announcement. All of the actions announced included cash penalties. Fifty four actions were against municipalities, and 300 were against industrial users.

These actions represented the third phase of an ongoing campaign to ensure the effective implementation and enforcement of pretreatment programs. EPA announced the first pretreatment initiative in October, 1989 with actions against 63 municipalities for failure to implement their approved programs. The second initiative, announced in May, 1991, included actions against both municipalities and industrial users. This year's initiative again included actions against both municipalities and industrial users, but was unique because it included for the first time, actions taken by municipalities against industrial users. As a result of these three initiatives, more than 670 judicial or administrative actions have been taken obtaining more than $54.1 million in penalties through enforcement. (For further information contact OWEC).

NPDES/Pretreatment Inspector Training and Development

The Water Enforcement Division of OWEC presented a variet, of inspector training during FY 1992. NPDES/Pretreatment program specific minimum training was presented at ten locations and Pretreatment compliance inspection training was conducted at two locations. Six (6) inspector training field sessions were held, two at industrial plants and four at POTWs. Three specialized training workshops and tours were held: 1) industrial inspection training; 2) biomonitoring laboratory audit training; and 3) a tour of an Offshore Training Center. Two hundred ninety nine (299) EPA and State inspectors received classroom training and one hundred eighty nine (189) inspectors received on-the-job training (OJT) as part of compliance inspections or field exercises. New classes for compliance biolab audit and industrial inspections (CEIs) were developed. Planning is underway to conduct training by satellite during FY 1993. A 16-minute training video on "Inspecting a Parshall Flume" was also distributed. Training videos on conventional NPDES field sampling, sludge sampling, and records review were filmed during the year. (For further information contact OWEC).

Safe Drinking Water Act

UIC

National UIC Administrative Orders

The ten National Administrative Orders on Consent (Orders) issued to Amoco, Ashland, BP, Exxon, Marathon, Mobil, Shell, Sun Oil, Texaco, and Unocal became effective on October 13, 1991. The Orders require the oil companies to submit extensive inventory information to EPA, cease injection, perform waste minimization, close over 1,400 injection wells, have oversight contractors certify proper closure of 10 percent of the wells, provide information about the potential for ground water contamination from shallow injection wells to company customers and pay penalties totaling $838,761.

This action will result in the permanent closure of over 1,400 service station bay drain wells nationwide which had been receiving automotive-related waste such as oil, anti-freeze, solvents, etc. This enforcement action was the first of its kind under the Underground Injection Control (UIC) Program in its use of national administrative orders to address oil company operations in 49 States and Territories. The UIC Compliance and Enforcement Section at Headquarters is actively tracking compliance with the Orders and sharing inventory information with the Regions and States. (For further information contact OGWDW).

UIC Administrative Settlement Guidance

The final UIC Program Administrative Order Settlement Policy, UIC Guidance No. 75, was issued on January 24, 1992. Headquarters staff with support from the National Enforcement Investigations Center and Clayton Environmental Services conducted Settlement Policy training sessions for UIC program and Regional Counsel staffs in Atlanta, Denver and San Francisco. The training sessions were well received and the Regions are now using the Settlement Policy in the negotiation of UIC administrative cases. A companion UIC Civil Settlement Policy will be developed in FY 1993. (For further information contact OGWDW).

Second Round Enforcement Initiative

A "second round" of national administrative settlement negotiations was announced by the Offices of Ground Water and Drinking Water, Federal Facilities Enforcement, Waste Programs Enforcement, and Water Enforcement in July. The second round initiative is focused on the closure of shallow injection wells at facilities owned and/or operated by 12 oil companies not covered in the "first round" and at federally operated Fleet Management Centers. Information request letters under §3007(a) of RCRA were mailed to 82 regional GSA Fleet Management Offices on September 23, 1992. Letters offering to negotiate settlements with 12 oil companies were mailed on October 30, 1992. Negotiations with the owners and/or operators has commenced and is expected to be concluded in the third quarter of FY 1993. (For further information contact OGWDW).

PWS

The Office of Groundwater and Drinking Water's (OGWDW) strategy to strengthen the PWSS enforcement program has three main points: to change the culture in State and Regional Offices; to raise the visibility of the program/and increase State capacity; and to obtain voluntary compliance as frequently and quickly as possible. OGWDW's approach to carrying out this strategy has been (and will continue to be):

- to increase State and Federal Enforcement activity
- to focus on the enforcement of the Surface Water Treatment and Lead & Copper Regulations
- to link with priority setting and primacy retention initiative.

In FY 1992, OGWDW issued several guidances and began to implement several initiatives. The major guidances are listed:

Guidance on the Use of Emergency Authorities Under §1431 of the SDWA

This guidance emphasized that §1431 has a broad application and provides EPA with an effective tool for handling public health endangerments at public water supplies and underground sources of drinking water. The guidance explains where the authority may be used, discusses EPA's internal procedures for issuing Section 1431 orders, and provides information on how to support and prepare such an order. (For further information contact OGWDW).

Guidance an Enforcement of the Requirements of the Surface Water Treatment Rule

In this guidance, OGWDW reaffirmed that the Surface Water Treatment (SWT) rule is one of the office's highest priorities for enforcement and that the office was taking an aggressive approach to enforcing the requirements. The guidance states that systems which are required to filter must have filtration in place by June 29, 1993 or they will become significant noncompliers on that date. The guidance further states that large systems (those serving 10,000 or more persons) should be subject to State or federal judicial actions. Smaller systems may be addressed by administrative actions. (For further information contact OGWDW).

Lead/Copper Enforcement Initiative

OGWDW has developed definitions of significant noncompliance for the lead/copper regulation, drafted an enforcement strategy for this rule, and has begun detailed tracking of compliance with the monitoring requirements under this rule. In FY 1993, OGWDW will continue to aggressively implement and enforce the requirements of this regulation by issuing orders to systems which fail to complete initial monitoring by the deadlines. In addition, the office will work with the States, using enforcement actions where appropriate to insure that public health is being protected until corrosion control is fully implemented. (For further information contact OGWDW).

Surface Water Treatment Rule Enforcement

OGWDW has been tracking the systems serving more than 10,000 persons in detail. States and Regions have been encouraged to initiate enforcement actions where possible based on current violations. The office will initiate enforcement actions once the deadline of June 29, 1993 has passed. (For further information contact OGWDW).

Data Quality

Complete, accurate data is critical to an enforcement program. OGWDW is in the process of designing a new data base system which will have many features, including the ability to make specific compliance determinations and will contain parametric data. In addition, the office has an ongoing program of conducting audits of State programs to investigate if the State is determining compliance correctly and if the information is being completely and accurately reported to EPA. Twelve such audits were conducted in FY 1992. OGWDW is also investigating potential cases of data falsification. (For further information contact OGWDW).

Resource Conservation and Recovery Act

Advanced RCRA Inspector Institute

OWPE has developed an advanced RCRA Inspector Institute to train state and regional inspection personnel. This training goes beyond the basic RCRA course and focuses on issues and rules that affect the future direction of the RCRA program. The Advanced Institute will cover multi-media inspections, import and export issues, combustion inspections, non-notifier detection, waste minimization issues, federal facilities and tribal land issues, and case development and inspection paradigms. (For further information contact OWPE).

Environmental Extension Network (EEN) Pilot

Educating RCRA handlers can assist in the reduction of, improve the handling of, and assure the final disposition of hazardous wastes. In short, educated handlers can improve compliance with RCRA regulations. OWPE has laid the foundation for a pilot extension project that will link current regulatory and technical assistance programs with communities, small and large businesses and any other organization that is involved in (and overwhelmed by) the RCRA program. (For further information contact OWPE).

RCRA Interactive Video - Land Disposal Restrictions

Providing consistent and timely training for state and regional RCRA inspectors has always been a challenge for the RCRA program. To meet this challenge, RED has developed a comprehensive Land Disposal Restrictions training program through the development of an interactive disk. The 8 hour training is divided into several modules allowing the inspector to work at his/her own pace. (For further information contact OWPE).

Inspector Training on New RCRA Regulations

OWPE provided training on the Boiler and Industrial Furnace and the Wood Preserver Rules. Inspectors and enforcement personnel were given an overview of the rules, inspection protocols and were able to ask questions about the rules via satellite. As a follow-up from FY 1991, RED undertook a train-the-trainer program in all ten Regions on the Air Emissions Rule. (For further information contact OWPE).

Imports and Exports of Hazardous Wastes

OWPE/RED has assumed the lead responsibility for implementing and monitoring the hazardous waste import and export program. Over the past year, RED developed procedures for processing and responding to both import and export notifications and for producing required correspondence. RED is currently in the process of developing a national automated database for the processing, tracking, storage and reporting of import and export notifications. This development is being performed in a phased approach. The import database tracking system was on line for testing in December 1992. The phase to enhance the current export notification process is scheduled to occur in FY '93. The program is expected to grow substantially with the implementation of two international agreements regulating the movement of hazardous wastes - OECD and BASEL. (For further information contact OWPE).

Laboratory Audit Inspection (LAI) Pamphlet

OWPE developed the third in a series of pamphlets designed to describe the scope and authority of specific RCRA inspections to the regulated community. The LAI pamphlet is aimed at labs doing analysis of samples from RCRA facilities. (For further information contact OWPE).

Alternative Dispute Resolution Training

OWPE/RED has developed a training course on Alternative Dispute Resolution (ADR) for the RCRA Enforcement Program. The objective of the training is to show how mediation and other ADR techniques may be useful in reducing the time spent negotiating consent orders. This training will be conducted in all ten Regions during FY 1993. (For further information contact OWPE).

Enforceability of Regulations Training

OWPE/RED has finalized a training course for EPA's RCRA regulation writers on the enforceability of RCRA regulations. The course will include presentations on the "day in the life of the inspector" and RCRA regulations from an enforcement perspective. The training is scheduled for early 1993. (For further information contact OWPE).

Boiler and Industrial Furnace Enforcement Strategy

OWPE completed and distributed The Enforcement Strategy for Boilers and Industrial Furnaces Burning Hazardous Waste to the Regions. This strategy will serve as guidance for the Regions in developing their own specialized strategies, ensuring effective implementation and enforcement of this complex rule. (For further information contact OWPE).

Non-Notifier Guidance

OWPE and Office of Enforcement - RCRA (OE-RCRA) developed and distributed to the regions guidance on the appropriate enforcement response to RCRA TSDFs that failed to submit a §3010 notification and/or a Part A application on time. (For further information contact OWPE).

RCRA Civil Penalty Policy

OWPE/RED is nearing completion on guidance affecting the costs of complying with common RCRA regulatory requirements. These compliance costs will be used in the BEN computer model to facilitate calculating economic benefit of noncompliance. The guidance, for example, discusses the costs of transporting waste off-site, installing a groundwater monitoring system and treating LDR regulated wastes. (For further information contact OWPE).

Hazardous Waste Transporters Initiative

With a grant from OWPE, the Midwest Environmental Enforcement Association, an association of 13 states and the Province of Ontario, Canada, investigated the compliance of motor carriers with hazardous waste regulations. Over a six month period, States within the Association examined motor carriers along interstates, weigh stations and at commercial treatment, storage and disposal facilities for hazardous materials and hazardous waste compliance. These inspections were performed by state

police, state hazardous waste and state transportation inspectors. During a one week period in July, seven states participated in a regional initiative. Inspections were conducted within a state or jointly among several states. Over 700 motor carriers were inspected. Approximately 225 of these motor carriers were identified as hazardous material carriers. Of the 225 hazardous materials carriers, 90 were identified as hazardous waste transporters. The majority of the transporters' violations were for Department of Transportation violations, e.g., equipment failure or the driver's failure to have proper and/or current documentation. (For further information contact OWPE).

Illegal Operators Initiative

In conjunction with the Regions and nine States, the Office of Waste Program Enforcement and the Office of Enforcement - RCRA announced a national enforcement initiative against handlers of hazardous waste that had failed to notify either the Region or the State of their hazardous waste activities. This initiative was the culmination of one year's investigative work that yielded 50 administrative complaints. The Regions issued administrative complaints against 27 owner/operators and the States issued 23 administrative complaints. Assessed penalties totaled over $20 million. (For further information contact OWPE).

Multi-Media Initiative

The RCRA Enforcement Program supported the Office of Enforcement's Three Industries and Benzene multi-media initiatives. The RCRA program contributed six of the eight cases in the Benzene initiative. Five cases were for violations of Subtitle I and one case for Subtitle C. Six hundred thousand dollars was assessed for these six cases. The Three Industries initiative (Pulp and Paper, Primary Metals and Industrial Organics) announced 24 civil and judicial filings. The RCRA program contributed 9 cases with assessed penalties of over $ 4 million. (For further information contact OWPE).

UST Field Citation Program

The Office of Underground Storage Tanks (OUST), with the assistance of Regional UST programs, Regional UST attorneys, Office of Enforcement, and Office of General Counsel, has developed a national strategy for a federal field citation program. Guidance for Federal Field Citation Enforcement, (April, 1992), establishes the parameters for the federal program, including the citation form and list of "citable" violations. By the end of FY 1992, Regions I, VI, VIII, and X had issued field citations and the remaining Regions are expected to have active programs in place by the end of FY 1993. (For further information contact OUST).

Superfund

Final Rule and Policy on Liability of Banks and Other Lenders Under CERCLA and RCRA

Following a period of intense interagency negotiations, the Final CERCLA Lender Liability Rule was signed by Administrator Reilly on Thursday, April 23, 1992, and was announced by the White House the following day as a key component of the President's Regulatory Reform Initiative. Its publication in the Federal Register on April 29, 1992, marked the end of a process begun August 2, 1990, when EPA first announced in Congressional testimony that it intended to promulgate a rule to clarify

the liability of lenders under Superfund. The proposed lender liability rule was transmitted to OMB on September 14, 1990, which started a protracted series of interagency negotiations on the proposal, including involvement by the White House's Council on Competitiveness. The proposed rule was signed June 5, 1991.

Well over 350 comments were submitted on the proposed rule, the vast majority of which supported the rule and its overall approach to clarifying the liability rules applicable to lenders following the 11th Circuit's 1990 decision in United States v. Fleet Factors. The rule defines the CERCLA §101(20)(A) "security interest exemption," which provides that any person whose "indicia of ownership" are held "primarily to protect a security interest" is not an owner or operator of a CERCLA facility, provided that they do not "participate in the management" of the facility. The rule lists a number of common loan management practices that are specifically defined not to be evidence that a lender is "participating in management," and also provides a general test of management participation by which the legality of activities that are not specifically covered can be assessed.

By clarifying the liability rules applicable to lenders, it enhances the Agency's enforcement posture by making it clear when and under what circumstances lenders should be held liable under Superfund, thereby making enforcement cases easier to evaluate. By minimizing the liability risks for banks, and in particular by allowing lenders to "police" their borrowers (commonly a site's owner/operator), the rule also serves to create incentives for the owner/operator to maintain sound environmental practices. Because the rule also ensures that funds will be available to otherwise credit-worthy borrowers, it was exempted from the Administration's moratorium on the issuance of new regulations and made a part of the Administration's package to reduce adverse economic impacts imposed by federal regulations.

The final rule also interprets a component of the §101(35) "innocent landowner" defense applicable to government entities that "involuntarily acquire" contaminated properties. Under the rule, insolvent banks and savings and loans that have been taken over by the Federal Deposit Insurance Corporation and/or the Resolution Trust Corporation are considered to have acquired the failed bank's assets "involuntarily" for purposes of the defense. Other government lenders are treated similarly, and property forfeited to the government is also considered an "involuntary" acquisition under the rule.

The final rule also provides guidance for a similar exemption from the definition of who is an "owner" of an underground storage tank (UST) under Subtitle I of RCRA, and states that the Agency is undertaking to promulgate a parallel RCRA rule for USTs. (For further information contact OE-Superfund)

National Bankruptcy Workgroup

On May 29, 1992, the National Bankruptcy Workgroup held its first meeting in Washington, D.C. The workgroup is comprised of persons from the regions, NEIC, and headquarters: OE-CERCLA, OE-RCRA, the Office of General Counsel, and OWPE, and is co-chaired by Lisa E. Comer OE-CERCLA and Andrea Madigan, Region IV. The workgroup's purpose is to discuss and develop projects and priority issues in both substantive and procedural areas in which the agency is involved and concerned. The group agreed that a long-term goal is to develop a bankruptcy manual for EPA and DOJ employees to use as a reference. The manual would provide guidance to facilitate the expeditious and coordinated filing of claims in Chapter 7 and 11 bankruptcy proceedings, and motions for issues including but not limited to abandonment and access. In order to facilitate active and productive discussion and to develop agendas and work-products, the members agreed to form four committees: "Proof of Claim" Committee, "Management and Organization of Bankruptcy Information" Committee, "Procedures for EPA Involvement in Bankruptcy Cases" Committee, and "Bankruptcy Forms" Committee. The workgroup

sees these committees as dynamic subgroups which interact with each other and which can be realigned to serve as troubleshooters and resolution-builders as different issues arise. The goal ultimately is to officially finalize the guidance and policy memoranda which originate within these committees. (For further information contact OE-Superfund)

Policy Toward Generators and Transporters of MSW

Approximately 25% to 30% of the Superfund Sites on the National Priority List are considered municipal sites, either because they are municipally owned or operated, or contain significant quantities of municipal solid waste (MSW). MSW is largely composed of non-hazardous substances although studies indicate that MSW may contain a very small percentage of hazardous substances. The Agency has a long-standing policy of not pursuing transporters or generators of MSW, absent any site-specific evidence that the MSW contributed by a party contains hazardous substances found at the site.

Increasingly, MSW contributors are being named as defendants in private contribution or in third-party Superfund enforcement actions, in situations in which the Agency would not ordinarily pursue such parties. Because of the problems created by litigation against MSW contributors, EPA has begun investigating ways in which to deal with such actions in a manner that is fair and equitable to all parties involved at a Superfund site.

The Agency is currently involved in seeking to resolve these cases at a variety of sites around the country, and many were nearing final resolution by the end of FY 1992. Settlements or other Agency involvement to foster settlements are currently underway in connection with the Charles George (MA), Beacon Heights (CT) and Laurel Park (CT) Sites in Region I, the West KL Avenue (MI) and Oak Grove (MI) Sites in Region V, and the Operating Industries (CA) Site in Region IX. Settlements with contributors of MSW are intended as part of the Agency's ongoing efforts to patrol the parameters of the CERCLA liability scheme. (For further information contact OE-Superfund)

Non-binding Allocation of Responsibility Pilot Project

A successful pilot project with OWPE, NEIC, and Regions IX, X and V was established in FY 1992 to perform non-binding allocations of responsibility (NBARs) pursuant to CERCLA Section 122(e)(3). Superfund Counsel William A. White and OWPE Director Bruce M. Diamond initiated the NBAR pilot project with NEIC Director Frank M. Covington in August 1991. A full NBAR for 121 responsible parties was completed for Hassayampa Landfill in Maricopa County, Arizona. This Agency allocation included re-allocation of defunct and non-viable party shares among viable PRPs, in proportion to the PRPs' Site waste contribution . The Hassayampa NBAR was sent to the viable PRPs at the end of FY 1992, with special notice and a proposed consent decree for PRP conduct of remedial design and remedial action at this Superfund site. A partial NBAR was completed at the Gould site in Region X, prompting the major PRPs to propose an alternate allocation which formed the basis for their settlement. A third NBAR at the Arrowhead Refinery Site in Hermantown, Minnesota is in development. The 1989 volumetric waste-in database has been updated with discovery information concerning more than 300 third party defendants, brought into the Arrowhead litigation by twelve PRPs initially named by EPA and DOJ. The Agency invited the Minnesota Arrowhead Steering Committee (MASC) to work jointly on the Arrowhead NBAR, or alternately to share MASC's separately developed database, but the steering committee declined. The Agency allocation thus will address difficult issues raised by litigation involving an active steering committee and numerous small third party defendants. Final stages of the NBAR Pilot Project will include consideration of methods to decentralize NBAR capabilities to the ten Regions, and development of the NBAR Pilot Project Report. (For further information contact OE-Superfund)

Enforcement Coordination with the Securities and Exchange Commission

Fiscal year 1992 saw continued coordination between EPA's enforcement program and the Securities and Exchange Commission in ensuring adequate disclosure of environmental liabilities, particularly Superfund liability, by publicly-held companies. The Agency transfers enforcement information, including Superfund PRP data, to the SEC, which uses the data to review firms' financial reports and identify violations of securities laws. EPA also reviews select disclosures and advises SEC as to their accuracy. This sharing of data and expertise increases the deterrence effect of the Agency's own enforcement efforts as companies realize that an EPA enforcement action can affect their financial reporting. The Agency hopes that this will lead companies to take a fresh look at ways of reducing releases of toxic substances and perhaps adopt waste minimization or other pollution prevention measures. (For further information contact OE-Superfund)

South San Francisco Bay Cost Recovery Initiative

As part of an initiative begun in FY 1991 to recover costs at 20 state-lead Superfund sites located in Silicon Valley south of San Francisco, EPA resolved 15 of the cases either by payment in full of past costs demanded or settlements of past and future costs under CERCLA §122(h) administrative authority. Through demand letters to the owners and/or operators of the South Bay facilities, EPA demanded reimbursement of approximately $5.6 million. Through payments or subsequent settlements, EPA received commitments for recovery of $3.4 million. Three cases are still in the midst of active negotiation while the two remaining cases have been referred and filed in federal district court seeking a total of $518,000 in past response costs and a declaratory judgment that EPA is entitled to recovery of any future response costs incurred.

Since the early 1980s, the State of California, through its State Water Resources Control Board and Regional Water Quality Control Board (RWQCB), has actively pursued the clean-up of contaminated groundwater at the South Bay sites. By the time many of these sites were placed on the National Priorities List, the RWQCB had already used state enforcement authorities to order potentially responsible parties (PRPs) to investigate and clean-up the South Bay groundwater contamination. In 1985, EPA awarded RWQCB federal money under the Multi-Site Cooperative Agreement (MSCA) to oversee the PRP studies and clean-up. Using federal funds, RWQCB, acted as the lead CERCLA agency overseeing the PRPs work. The cost recovery commitments reimburse EPA for the federal MSCA monies awarded to the RWQCB as well as EPA's own intramural and extramural costs. (For further information contact OE-Superfund)

Toxic Substances Control Act

TSCA Section 8(e) Compliance Audit Program (CAP)

Phase One reporting of TSCA section 8(e) health effects information was nearly completed by the end of FY 1992 (Phase Two reporting of environmental effects information should be completed in late 1993). Approximately 7,000 studies have submitted under the CAP, with estimates of total stipulated penalties ranging from five to twenty million dollars. During FY 1991, EPA launched the TSCA Section 8(e) CAP, a first-of-its-kind voluntary audit program designed to achieve the Agency's goal of obtaining any outstanding section 8(e) substantial risk information, and provide maximum encouragement for companies to voluntarily audit their files. Under the CAP, companies agreed to register for the program, conduct a corporate-wide audit for TSCA 8(e) reportable information, and pay

stipulated penalties for each study reported up to an overall $1,000,000 ceiling. More than 120 companies (excluding subsidiaries) registered for the CAP. (For further information contact OE-TLD).

EPA/OSHA MOU

The Secretary of the Department of Labor and the Administrator of the Environmental Protection Agency (EPA) signed a Memorandum of Understanding (MOU) on November 23, 1990, with the goal of establishing a program for improved environmental and workplace health and safety. The MOU requires development of workplans to implement, among other things, training and data exchange.

On June 19, 1992, the Acting Assistant Secretary of the U.S. Department of Labor Occupational Safety & Health Administration (OSHA) and the Assistant Administrator of the Office of Enforcement, EPA, signed the OSHA-EPA workplan for FY 1992. (For further information contact OE-TLD).

Supplemental Environmental Projects (SEPs)

The Office of Compliance Monitoring (OCM) in the Office of Prevention, Pesticides and Toxic Substances (OPPTS) released an Interim Final Accomplishments Report for Fiscal Year 1991/1992 on SEPs in the TSCA, FIFRA and EPCRA §313 enforcement programs. This report includes a summary of the SEP data extracted from the OPPTS enforcement data base, the FIFRA & TSCA Tracking System (FTTS)/National Compliance Data Base (NCDB), three sample regional cases settled with SEP settlement terms, and instructions on how to access SEP data. A few of the interesting findings contained in this report include the following: (1) During FY 1992, a total of 160 · vil administrative complaints under TSCA, EPCRA §313 and FIFRA were settled with SEPs; (2) Pollution prevention SEPs under EPCRA §313 constituted the largest number of pollution prevention SEPs settled by the Agency as a whole during FY 1992 (83% as of July 1992); (3) Non-pollution prevention SEPs under TSCA constituted the largest number of non-pollution prevention SEPs settled by the Agency as a whole (46% as of July 1992); and, (4) During FY 1992, the ratio of average cost to respondent for completing an SEP versus average penalty reduction received for the SEP was approximately 6:1 fo. TSCA, 6:1 for EPCRA and 2:1 for FIFRA. The final report will be published in second quarter of FY 1993. Copies may be obtained from OCM's Compliance Branch.

Supplemental environmental projects (SEPs) are environmentally beneficial actions that a violator of a statute or regulation agrees to undertake in exchange for a partial mitigation of a civil penalty. During FY 1992, OCM has been very active in the area of SEP policy development. OCM is currently chairing the Agency-wide Workgroup on Supplemental Environmental Projects. This workgroup is charged with identifying and addressing barriers to incorporating pollution prevention into SEPs. OCM also completed the report, "Investigation of Environmentally Beneficial Expenditures For Settlement Agreements." This report evaluated the effectiveness of SEPs and identified the types of SEPs that may be especially beneficial to the environment. Additionally, OCM is preparing an SEP guidance which is specific to the OPPTS Enforcement Program. This guidance would apply the February 12, 1991 memorandum from the Office of Enforcement on the use of SEPs in EPA settlements. (For further information contact OCM).

National Inspection Guidance and Training Effort

In December 1992, the Draft Report outlining the Recommendations of the OPPTS Inspector Training Strategy Group was forwarded to the Regional Branch Chiefs for Pesticides and Toxics, and to the National Enforcement Training Institute (NETI). The OPPTS Inspector Training Strategy Group is

co-chaired by the Office of Compliance Monitoring (OCM) and Region IV. The Regions were asked to ensure that all interested pesticide and toxics enforcement grantees be provided an opportunity to comment on the draft report. The purpose of the OPPTS Inspector Training Strategy Group is to: 1) identify and discuss short and long-term programs and enhancements needed for inspector guidance and training for the OPPTS program areas of FIFRA, TSCA (PCBs, Asbestos, and Core TSCA), and EPCRA §313; and 2) discuss appropriate and feasible approaches to implement these programs. The Strategy Group looked at overall and major OPPTS inspector training needs in an integrated and coordinated manner. The report discusses the recommended framework for training, options for delivery, and proposed timeframes for implementation. The Strategy Group proposed the following Framework and Course Curriculum for Inspector Training for FIFRA, TSCA, and EPCRA §313.

A. Introductory Inspector Training Curriculum (Recommended to be completed within first two years): 1)Basic Inspector Training Course (in existence); 2)Basic Health and Safety Training (in existence); 3)On-the Job Training and Developmental Training; 4)Program-specific Modules: 5)Other courses recommended for completion by Novice Inspectors

B. Advanced Technical Training

This is a specialized or advanced curricula for complex, difficult, or 'new' components of inspections (i.e. specific training for conducting pesticide Worker Protection Inspections). This could also be training for specific technical activities to be employed during inspections (i.e. advanced sampling techniques or photography).

C. Advanced Professional Training

These are training courses designed to strengthen specific skills associated with the compliance and enforcement activities.

It is planned that the development of the introductory Pesticides courses would be completed by the end of FY 1993. The development and delivery of the TSCA, EPCRA, and remaining pesticides courses should be completed by the end of FY 1994. (For further information contact OCM).

TSCA §5/8 Inspection Guidance (Chemical reporting)

The TSCA §5/8 Inspection Guidance was distributed by the Office Compliance Monitoring in OPPTS. This manual, distributed in final form, considers the OPPTS FY 1993 Memorandum of Agreement (MOA) priorities and includes guidance on inspection targeting, pre and post-inspection activities and the conduct of TSCA inspections under §§4 (non-GLP), 5, 8, 12 and 13. (For further information contact OCM).

PCB Inspection Manual

The revised PCB Inspection Manual was distributed in draft form by the Office of Compliance Monitoring in OPPTS. The manual reflects revised inspection priorities consistent with the national priority areas identified in the OPPTS FY 1993 Memorandum of Agreement (MOA) guidance. It was distributed for review and comment by the Regional Branch Chiefs, Regional PCB Coordinators, PCB State grantees, OPPT, and NEIC. The final version will be completed in mid-FY 1993. (For further information contact OCM).

Asbestos Abatement Inspection Guidance

The Asbestos Abatement Inspection Guidance was disseminated in final form by the Office of Compliance Monitoring in OPPTS. This document is designed to assist AHERA inspectors in performing asbestos inspections, including reviews of abatement actions performed at schools, a priority area under the OPPTS FY 1993 Memorandum of Agreement. (For further information contact OCM).

Hexavalent Chromium

During FY 1992, OCM has been developing a Hexavalent Chromium Enforcement Response Policy. This policy will be used by the Agency to determine the appropriate enforcement response for violations of Water Treatment Chemicals Regulation. The Water Treatment Chemicals Regulation prohibits, under TSCA §6, the distribution in commerce of hexavalent chromium based water treatment chemicals for use in comfort cooling towers. (For further information contact OCM).

Ability to Pay

During FY 1992, OCM completed a draft guidance manual for determining the ability of a not-for-profit organization or governmental entity to pay civil penalties assessed under TSCA and other statutes where ability to pay must be considered. This guidance manual is designed for use by EPA enforcement staff. The draft manual is currently undergoing review by the Regions and Headquarters. The final guidance will be completed in early FY 1993. (For further information contact OCM).

Asbestos Hazard Emergency Response Act (AHERA)

During FY 1992, OCM completed development and began implementation of the AHERA Interpretive Guidance Process. This process, which involved a workgroup consisting of members from the Regions, States, OCM, and program office, was established to resolve questions and concerns related to AHERA raised by the Regions, states, and public. As the lead for the process, OCM developed several policy papers, including, Miscellaneous and Nonfriable Suspect Material Sampling Requirements; "Suspect" Asbestos-Containing Building Materials; Visual Inspection; Project Design; LEA Training Requirements for Contractor Maintenance Workers; and Response Actions Related to VAT Removal. The Guidance Workgroup also responded to questions ranging from whether to inspect for suspect ACBM under carpeting to enforcement-related triennial reinspection issues. (For further information contact OCM).

Amendment to the AHERA Enforcement Response Policy (ERP)

In January 1992, OCM issued an amendment to the AHERA ERP. This amendment changed the January 1989 AHERA ERP to reflect changes in the violations and penalty amounts created by the Asbestos School Hazard Abatement Reauthorization Act. (For further information contact OCM).

Cooperative Agreements and Grant Awards - TSCA

During FY 1992, a total of $5 million was distributed to the States under TSCA Enforcement Cooperative Agreements. During FY 1992, OCM also drafted a policy which will allow States that have waivers for the AHERA program to receive grant funding from the EPA. Grants had not previously funded these programs. This new policy was reflected in the final FY 1993 TSCA

Cooperative Agreement Guidance, and AHERA waiver state programs will be eligible for funding beginning in FY 1993.

Upon recommendations from a workgroup of headquarters and regional participants, OCM awarded a total $400,000 in cooperative agreements to states in support of multi-media toxics compliance programs in FY 1992. The State of Pennsylvania received a $200,000 award for their multi-media enforcement initiative, and the State of Washington received $200,000 to support a combined asbestos-in-schools/lead survey project. (For further information contact OCM).

OCM TSCA/Tribal Conference

OCM conducted a TSCA/Tribal Conference on November 5 and 6, 1992, in Denver, Colorado. Attendees included 25 Indian participants, the staff of EPA's Regional Indian Workgroup, the Bureau of Indian Affairs, Indian Health Services, the Office of Pollution Prevention and Toxics (OPPT), and OCM. The purpose of the conference was to introduce interested tribal personnel to EPA's TSCA program, risk assessments, the TSCA grant funding and grant process, and information on asbestos and PCB regulations. (For further information contact OCM).

Interpretive Guidance Access System

During FY 1992, OCM developed a comprehensive interpretive guidance access ADP system that will provide quick and easy access to TSCA and AHERA enforcement policies, interpretations, and correspondence. The system contains over 1,000 document abstracts, complete with bibliographic information and references to CFR or Federal Register citations. It allows the user to determine if any previous correspondence was issued relating to a present question by choosing key words, author, dates, etc. The system will be user tested during a three-month trial period in the first quarter of FY 1993. After a satisfactory test-run, the computer program will be copied, along with the original documents, and distributed to the Regions. OCM will maintain and update the system periodically as new documents are produced. (For further information contact OCM).

AHERA SWAT Team and AHERA Case Support Guidance Manual

OCM, along with OGC, OE, and OPPT continued the AHERA SWAT Team to address substantive AHERA issues. During FY 1992, the SWAT Team evaluated the Region IV "other person" cases and evaluated the litigation risk of each of these cases. The SWAT Team's findings were issued as a report to Region IV on June 12, 1992. The findings from last years Region V AHERA SWAT Team report and this years Region IV report were compiled into a user friendly reference document entitled the "AHERA Cases Support Guidance Manual." This manual was distributed to the Regions on October 8, 1992, for the purpose of fostering a consistent approach to the development of AHERA cases. (For further information contact OCM).

Mine Safety and Health Administration and PCBs

In response to concerns about abandonment of PCBs in underground mines, and the resulting risk to groundwater, OCM has been developing a Memoranda of Agreement with the Mine Safety and Health Administration (MSHA) to assist EPA in identifying underground mines that use PCBs. This agreement is currently being reviewed by the Federal Employees Union.

Under the terms of the agreement being developed, MSHA inspectors would fill out PCB checklists for each underground mine and send them to the EPA Regions for followup inspection. Through the information collected by MSHA, the EPA regions will know how much PCB equipment is underground, whether there are any apparent violations or environmental concerns, and whether the mine plans to close in the near future. By the end of FY 1993, OCM expects to have a complete record of mines with PCBs. OCM will use this information to target mine operators for outreach and inspections in order to decrease the likelihood of future abandonments. (For further information contact OCM).

OCM Strategic Dialogue

In FY 1992, for the purpose of examining and refining the future course of the OPPTS compliance and enforcement program, the Office of Compliance Monitoring set up the "Strategic Dialogue Task Force". During the year, the Strategic Dialogue Task Force made significant progress in refining our vision and redirecting the future of EPA's pesticide and toxics compliance program. The Task Force consists of representatives from the states, the EPA Regional Offices, the Office of Enforcement, and the Office of Prevention, Pesticides and Toxics Substances (OPPTS). During the past year, the Task Force examined the strengths and weaknesses of the current compliance program. From that examination, the Task Force defined a vision of the ideal future compliance program, a compliance program model, and statement of future directions to help define and guide changes in the compliance program. The Task Force also agreed to implement a set of compliance initiatives for FY 1993; began work on developing a series of environmental measures in selected toxics and pesticides programs; and, further defined and began to implement the Pesticides Field Data Plan. The Task Force also agreed to implement a set of compliance initiatives for FY 1993: began work on developing a series of environmental measures in selected toxics and pesticides programs; and, further defined and began to implement the Pesticides Field Data Plan. The Task Force also developed a proposed set of criteria for setting priorities within and between existing programs and potential new activities. (For further information contact OCM).

Federal Insecticide, Fungicide, and Rodenticide Act

FIFRA §19 Phase 1 Procedural Rule

OCM headed the workgroup that developed the proposed Pesticide Management and Disposal regulations for the acceptance, recall, submission of storage and disposal plans, and indemnification of suspended and canceled pesticides (FIFRA §19 Phase 1 Procedural Rule). This rule will prescribe procedures for conducting recalls under FIFRA §19 and has served as the basis for a similar program in a proposed regulation issued by the Office of Solid Waste. (For further information contact OCM).

FIFRA §6(g)

As part of the 1988 amendments to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), Congress added FIFRA §6(g). This section of the statute requires certain people to notify EPA and appropriate State and Local Officials of the quantity and location of canceled or suspended pesticides in their possession.

In FY 1992, OCM was involved with several activities to further implement this new section of the statute. OCM continued to chair the workgroup formed to finalize the March 28, 1991, proposed policy on FIFRA section 6(g) (56 FR 13042). This policy will clarify the requirements of FIFRA §6(g), outline the responsibilities of people who must submit information under FIFRA §6(g), and delineate the procedures which must be followed when FIFRA §6(g) information is submitted.

Additionally, OCM prepared a FIFRA §6(g) Notice which was published in the Federal Register along with the Ethyl Parathion Cancellation Order. The Parathion FIFRA § 6(g) Notice resulted in approximately 120 reports from people that possess canceled parathion products. The information collected through the parathion FIFRA §6(g) notice was entered into the newly developed FIFRA §6(g) Tracking System and was forwarded to the Regional Offices and States for risk-based inspection targeting purposes. (For further information contact OCM).

Pesticide Regulatory Educational Program (PREP)

In FY 1992, OCM's leadership role in the Pesticide Regulatory Educational Program (PREP) continued. Courses were offered by Michigan State University at East Lansing, by the University of Florida at Orlando, and by the University of California at Davis. These courses in leadership, pesticides and groundwater, endangered species, worker protection and disposal were offered to over two hundred States, Tribal, Territorial, and Regional Pesticide Regulatory Officials. The coordination and direction of these programs was accomplished by a Regional/State/Institution Coordinating Committee and an EPA/State Steering Committee. (For further information contact OCM).

Ethyl Parathion

The Office of Compliance Monitoring assisted the Office of Pesticide Programs and the Office of General Counsel in drafting the December 13, 1991, Federal Register Notice announcing the Ethyl Parathion Cancellation Order and the FIFRA §6(g) provisions. On January 24, 1992, OCM issued the Interim Final Ethyl Parathion Compliance Monitoring Strategy. This strategy provided guidance and information to the Regions and States for monitoring compliance with the various provisions of the December 13, 1991 Ethyl Parathion Cancellation Order and FIFRA §6(g) Notice. (For further information contact OCM).

Pesticides Export Policy

In FY 1992, EPA completed most of the steps necessary to publish the final Pesticides Export Policy. OCM worked with OPP to draft the final export policy provisions under FIFRA §17(a), the supporting statement for the Paperwork Reduction Act and assisted in the development of the economic analysis. The Pesticides Export Policy clarifies the requirements for labeling exported pesticides and the requirements affecting the export of research and development pesticides. It also broadens the scope of regulatory actions which will trigger requirements for international notifications for the export of canceled, suspended, and unregistered pesticides. (For further information contact OCM).

Cooperative Agreements and Grant Awards - FIFRA

During FY 1992, a total of $15.8 million was distributed to the States under Pesticides Enforcement Cooperative Agreements. As part of that program, OCM provided assistance to state pesticide programs through several special grant projects in FY 1992. Three projects were directed at state pesticide laboratories to ensure their capability for doing quality analysis in support of state enforcement actions. The OCM Grants and Evaluation Branch oversaw the process for awarding $500,000 to 26 states for the purchase of needed laboratory equipment. In cooperation with the NEIC, OCM funded a purchase agreement through which state laboratories can order pesticide reference samples for use in analysis. Finally, a model quality assurance project plan for state laboratories, developed by the State of Montana Laboratory under a cooperative agreement, was finalized and distributed in September, 1992. (For further information contact OCM).

FIFRA Project Officer's Manual

In May 1992, OCM issued the "FIFRA Project Officer's Manual." This manual describes the role of Cooperative Agreement Project Officers and compiles the basic reference information and documents that will be needed in carrying out cooperative agreement management. This manual was developed by a Region/Headquarters Workgroup. (For further information contact OCM).

Agricultural Worker Protection Standard

On August 13, 1992, EPA promulgated the Worker Protection Standard (40 CFR Part 170) and the related labeling requirements (40 CFR Part 156) which address pesticide related occupational safety and health of pesticide handlers and agricultural workers.

OCM played an active role on the workgroup responsible for the development of the Agricultural Worker Protection Standard and related supporting documents. Since promulgation of the regulations, OCM has been developing the Compliance Monitoring Strategy, special inspector training, developing outreach and compliance assistance materials for enforcement personnel and the regulated community, and assisting OPP with its outreach program. (For further information contact OCM).

Outreach to Pesticide Inspectors

During FY 1992, OCM produced three issues of the "Quarterly Update for Inspectors in Pesticide Enforcement" (QUIPE). In its third year, this publication provides state pesticide inspectors a brief report of current pesticide enforcement issues and topics. (For further information contact OCM).

Good Laboratory Practice Standards

During FY 1992, OCM invested a great deal of effort in outreach and education for the Good Laboratory Practice Standards Program. The time and resources were invested in GLP education and outreach in order to further emphasize the importance of our GLP Program and increase compliance by providing the regulated community with the information they need.

On May 12, 1992, OCM issued the final FIFRA Good Laboratory Practice Standards Questions and Answers (Q&A) Document. This document is designed to provide a reference of existing GLP policies for the regulated community as well as the EPA. The GLP Q&A Document was directly mailed to an extensive sector of the regulated community, including known testing facilities, professional organizations, and people who have previously written OCM for GLP policy inquiries.

The OCM Pesticide Enforcement Policy Branch published an article entitled, "Good Laboratory Practice Standards – Policy and Interpretation" included as part of a book entitled, Good Laboratory Practice Standards—Applications for Field and Laboratory Studies, American Chemical Society Press, 1992. The article focused on how policy questions regarding GLPs are dealt with at EPA. The article was also presented at the 200th National Meeting of the American Chemical Society in August.

OCM also organized and conducted two Seminars/Conferences on the FIFRA GLPs. The first was held in June for Headquarters personnel in program offices which work with enforcement of the GLPs or data reviews where GLP compliance is an issue. Topics included an overview and background of the regulations, inspection and case review related to the GLPs, GLP policy development and the Enforcement Response Policy. The second was held September 9 and 10 for the regulated community.

This conference was attended by representatives from USDA, State Agencies, University Laboratories, and IR-4, as well as private industry. The conference was used to present a wide array of topics, including explanations of the regulations and their history and related enforcement and compliance issues. Presentations on inspectional programs, data requirements, and industry perspectives were also made.

OCM conducted six seminars on the GLPs for scientific personnel in OPP, in order to improve OPP's understanding of the GLP program and enhance OCM's interaction with the Office of Pesticide Programs (OPP) on GLP matters. Additionally, a total of 34 OPP scientists participated on GLP inspections. (For further information contact OCM).

Notices of Intent to Suspend Pesticide Registration

Suspension is an Agency action which affects the legal status of a pesticide product registration. After a suspension becomes final and effective, the pesticide registrant subject to the suspension may not legally distribute, sell, or use the product subject to the suspension.

Since November, 1989 the Office of Compliance Monitoring (OCM) has had the responsibility for issuing Notices of Intent to Suspend (NOITS), tracking the status of pesticide products, and enforcing non-compliance with data requirements imposed pursuant to §§3(c)(2)(B) and 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In FY 1992, OCM initiated 103 NOITS actions for non-compliance with FIFRA resulting in 48 suspensions. In other cases, various outcomes resulted, such as suspension did not occur or the matters were settled resulting in data submission. (For further information contact OCM).

Case Development Training

During FY 1992, OCM conducted Case Development Training in Seattle, Denver, Atlanta, and Chicago for the regional staff and the regional counsel. Each participant received a manual covering pertinent TSCA, FIFRA, and EPCRA law as well as a case study used in connection with a mock settlement conference. A special edition of the Case Development Training Course was also presented in Washington, DC for the Office of Pesticide Programs. This course was specifically designed to give OPP staff an appreciation of the difficulties encountered in the enforcement of pesticide labels and other regulatory decisions and programs promulgated by OPP. (For further information contact OCM).

Training Course for Good Laboratory Practices Inspectors

The Office of Compliance Monitoring (OCM), Laboratory Data Integrity Assurance Division (LDIAD), held a training course for EPA inspectors involved in the Good Laboratory Practice (GLP) program in August, 1992. The theme was "GLP Inspection and Fraud Detection". Participants included EPA inspectors from OCM, regions II, III, IV, V and the National Enforcement Investigations Center. Other participants were representatives from the U.S. Food and Drug Administration (FDA), Agency for Toxic Substances & Disease Registry, National Institute of Health, Office of Inspector General (EPA) and the Society of Quality Assurance. International GLP authorities came from Switzerland and the United Kingdom. A follow-up training course will be held in May, 1993. (For further information contact OCM).

Emergency Planning and Community Right to Know Act (EPCRA) § 313

Emergency Planning and Community Right-to-Know Act (EPCRA) Enforcement Response Policy

In response to adverse Administrative Law Judge (ALJ) decisions and other issues raised by practical application of the December 2, 1988 EPCRA Enforcement Response Policy (ERP), OCM revised the Enforcement Response Policy for EPCRA §313. This policy, which was issued as final on August 10, 1992, will be used by EPA to determine the appropriate enforcement response for violations of EPCRA §313. The revised ERP, which was the result of a cooperative effort between Headquarters and the Regions, provides for identical treatment of late reporters and nonreporters, with up to 50% reductions for self-disclosure. The new policy also identifies eight types of data-quality violations as well as recordkeeping and supplier notification violations. As a result of the difficulty in obtaining OMB approval for the 1991 Form R and subsequent late issuance of the form to the regulated community, OCM prepared a Question and Answer Document to explain EPA's policy on enforcement for the 1991 EPCRA section 313 Reports. This Q&A Document was distributed to the Regions on July 6, 1992. (For further information contact OCM).

EPCRA §313 Data Quality Inspection Manual

The EPCRA §313 Data Quality Inspection Manual was distributed by the Office Compliance Monitoring in OPPTS. This manual is intended to provide EPCRA §313 inspectors with the tools necessary to fulfill the new emphasis on data quality inspections. It includes specific guidance to the inspectors regarding the use of the EPCRA Targeting System (ETS), the OCM developed automated inspection targeting and tracking tool. The manual, distributed in interim final form, will be field tested by the Regions from January through June 1993. Enhancements will be made as appropriate after June. (For further information contact OCM).

Cooperative Agreements and Grant Awards - EPCRA

During FY 1992, OCM offered $200,000 of extramural funding for EPCRA Enforcement Cooperative Agreements. This represents an increase of $100,000 from the FY 1991 funding available for this program. As a result of this increase in funding New York, Kentucky, Ohio, and Texas were each funded with $50,000 to support compliance activities related to the reporting requirements of the EPCRA section 313. (For further information contact OCM).

Forum on State and Tribal Toxics Action (FOSTTA)

FOSTTA had a very successful first year in which three FOSTTA meetings were held. As a result of these meetings, there has been a significant increase in state involvement in a variety of developing toxics related issues. Also during FY 1992, FOSTTA included its first tribal participants. FOSTTA's FY 1992 activities included: a State and Tribal Enhancement Project; a Chemical Management Project; a Chemical Information Management Project (EPCRA/TRI related issues); a Pollution Prevention Project; and, a Lead (Pb) Project. (For further information contact OCM).

VI. Media Specific Enforcement Performance and Regional Accomplishments

A. Media Specific Enforcement Performance

Clean Air Act - Stationary Sources

The implementation of the revised Significant Violator (SV)/ Timely and Appropriate (T&A) Guidance in the second quarter of FY 1992 significantly increased the universe of major sources. The number of sources added to the SV list and the number of SV's addressed each rose by more than 25 percent. In FY 1992, 778 sources were added, an increase of 170 from FY 1991's total of 608. The Stationary Source Compliance Division (SSCD) expects the number of SV's identified and addressed to continue to increase in FY 1993.

In the third quarter FY 1992, the Clean Air Act Amendment (CAA) administrative penalty authority was implemented, which resulted in the issuing of over 100 orders. The number of civil cases referred to the Department of Justice (DOJ) increased to 86 in FY 1992 from FY 1991's total of 74.

SSCD led a national initiative against Louisiana-Pacific Corporation (LP) for violations of the Prevention of Significant Deterioration (PSD) regulations under the New Source Review Program. A Notice of Violation (NOV) was issued against LPC for eight facilities in three Regions for violating state permits and PSD permits. LP is the market leader in the oriented strand board industry with over [illegible] percent of the market share. The Regions covered in the NOV were Regions IV, V and [illegible]. Region X had previously issued an NOV against LPC for similar violations at their Chilco, ID, facility.

To improve efforts to return air emissions facilities to compliance, SSCD piloted Compliance Planning and Oversight Guidance (CPOG) initiatives in Virginia and Maine. In addition, New Jersey, North Carolina, Alabama, Hillsboro County, FL, Kansas, Utah, Arizona and Washington have all begun developing compliance plans. The program, developed with close state and EPA Regional involvement, establishes an accountability process in which the state sets compliance program goals and strategies with the Region.

Clean Air Act - Mobile Sources Field Operations and Support Division

The Field Operations and Support Division (FOSD) in the Office of Mobile Sources (OMS) enforces the fuels, anti-tampering, emissions warranty, and related provisions of Title II of the Clean Air Act and assists in developing enforcement policy for OMS. Elements of this enforcement program include: field investigating (augmented by state and local efforts and by contractor inspections), the issuance of Notices of Violation (NOVs), negotiation of settlements, referral of cases to the U.S. Department of Justice, and litigation if necessary. This centralized approach to enforcement historically has been extremely successful.

Major enforcement achievements during FY 1992 include the development of an internal policy and mechanism for conducting administrative hearings, a process provided for in the Clean Air Act ("CAA") Amendments of 1990, and the continued development and drafting of the enforcement provisions for the reformulated gasoline, anti-dumping and detergents rulemakings. The volatility enforcement program resulted in continuing high levels of compliance as a result of FOSD's aggressive enforcement efforts. Aggressive enforcement of the defeat device prohibition of the CAA resulted in settlement of several cases against manufacturers and sellers of catalytic converter replacement pipes. Aggressive enforcement also resulted in an increase in compliance regarding the installation of aftermarket catalytic converters.

FOSD settled 214 cases in FY 1992 with cash civil penalties totaling $1,059,000. Additional payments totaling $410,000 went to alternative payment projects. The largest civil penalties were generated from the settlement of five outstanding lead phasedown cases with $674,000 in civil penalties. In addition, Consent Decrees were entered in four judicial cases during FY 1992 for penalties totaling $136,080.

Clean Water Act Enforcement - NPDES

Timely and Appropriate Enforcement and the NPDES Exceptions Report

The NPDES enforcement program has defined Significant Noncompliance (SNC) to include violations of effluent limits, reporting requirements, and/or violations of formal enforcement actions. The NPDES program does not track SNC against a "fixed base" of SNC that is established at the beginning of the year, rater, the program tracks SNCs on a quarterly basis. During FY 1992, 90% of all NPDES SNCs were resolved in a "timely and appropriate" manner.

Those facilities that have been in SNC for two or more quarters without returning to compliance or being addressed by a formal enforcement action are identified on an "exceptions list". During FY 1992, 277 facilities were reported on the SNC exceptions list including 108 facilities that were unaddressed from the previous year and 169 facilities that appeared on the list for the first time during the year. Of the 277 facilities on the exceptions list, 153 returned to compliance by the end of the year, 84 were subject to formal enforcement action, and 40 facilities remained to be addressed during the upcoming year.

Clean Water Act Enforcement - §404 (Wetlands)

EPA and the Army Corps of Engineers jointly enforce the requirements of §404 of the Clean Water Act, which prohibits the unpermitted discharge of dredged or fill material into wetlands or other waters of the United States. Under a Memorandum of Agreement between the two agencies, the Corps - as the Federal permitting agency - has the lead on Corps-issued permit violations and the EPA has the lead on many unpermitted discharge cases.

A primary goal of the EPA's wetlands enforcement program is environmental protection. EPA seeks timely removal of the unauthorized discharge and restoration of the site, where appropriate. Another important goal of §404 is deterrence, both in regard to a particular violator and to the regulated community as a whole. Consequently, EPA may seek monetary penalties either alone or in addition to injunctive relief. The program also strives for fair and equitable treatment of the regulated community. EPA is committed to enforcing the requirements of §404 to ensure that violators are not allowed to profit from their illegal actions.

During FY 1992, EPA continued to use the various enforcement mechanisms provided under the Clean Water Act in response to violations of §404. In FY 1992, EPA issued 128 administrative compliance orders, 26 administrative penalty complaints, and referred 15 civil and criminal judicial cases to the Department of Justice. In contrast, in FY 1991, EPA issued 98 administrative compliance orders, 21 administrative penalty complaints, and referred 11 civil and criminal cases to the Department of Justice.

U.S. Environmental Protection Agency Regional Offices
Enforcement Information Contacts

Region I - Boston

Connecticut, Maine, Massachussetts,
New Hampshire, Rhode Island, Vermont

Office of External Programs
JFK Federal Building - One Congress Street
Boston, MA 02203
617-565-2713

Region II - New York

New Jersey, New York, Puerto Rico,
Virgin Islands

Office of External Programs
Jacob K. Javitz Federal Building
26 Federal Plaza
New York, NY 10278
212-264-2515

Region III - Philadelphia

Delaware, District of Columbia, Maryland,
Pennsylvania, Virginia, West Virginia

Office of External Affairs
841 Chestnut Building
Philadelphia, PA 19107
215-597-6938

Region IV - Atlanta

Alabama, Florida, Georgia, Kentucky, Mississippi,
North Carolina, South Carolina, Tennessee

Office of Public Affairs
345 Courtland Street, N.E.
Atlanta, GA 30365
404-347-3004

Region V - Chicago

Illinois, Indiana, Michigan, Minnesota
Ohio, Wisconsin

Office of Public Affairs
77 West Jackson Boulevard
Chicago, IL 60604-3507
312-353-2072

Region VI - Dallas

Arkansas, Louisiana, New Mexico,
Oklahoma, Texas

Office of External Affairs
First Interstate Bank Tower at Fountain Place
1445 Ross Ave. 12th Floor Suite 1200
Dallas TX 75202-2733
214-655-2200

Region VII - Kansas City

Iowa, Kansas, Missouri, Nebraska

Office of Public Affairs
726 Minnesota Avenue
Kansas City, KS 66101
913-551-7003

Region VIII - Denver

Colorado, Montana, North Dakota,
South Dakota, Utah, Wyoming

Office of External Affairs
999 18th Street Suite 500
Denver, CO 80202-2405
303-294-1120

Region IX - San Francisco

Arizona, California, Hawaii, Nevada,
Trust Territories

Office of External Affairs
75 Hawthorne Street
San Francisco, CA 94105
415-744-1585

Region X - Seattle

Alaska, Idaho, Oregon, Washington

Office of the Deputy Regional Administrator
1200 Sixth Avenue
Seattle, WA 98101
206-553-1107

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Safe Drinking Water Act Enforcement

PWSS Enforcement Program

In FY 1992, the Office of Groundwater and Drinking Water (OGWDW) continued to strengthen its Public Water System Supervision (PWSS) enforcement program through record numbers of administrative actions, several precedent setting judicial actions, and the development and implementation of several program guidances and initiatives. These will lay the foundation for an even stronger program in FY 1993.

In FY 1992, the PWSS program set new records for numbers of administrative orders issued. The program issued 539 proposed administrative orders and 352 final administrative orders (up from 443 PAOs and 297 FAOs in FY 1991). In addition, the program doubled the number of complaints for administrative penalty, issuing 32 in FY 1992 (vs. 16 in FY 1991); the program also increased by one-third the number of 1431 orders – 9 were issued in FY 1992 vs 6 in FY 1991.

The program continues to work to increase the number of civil judicial actions. The program anticipates a large number of additional civil cases as it moves to enforce the requirements of the new regulations, especially of the Surface Water Treatment Rule.

Resource Conservation and Recovery Act Enforcement (RCRA)

The 1990 RCRA Implementation Study (RIS) provided an opportunity to evaluate the impact to the national hazardous waste program on protecting human health and the environment. The Study continues to be a major cornerstone for implementing the RCRA program. The Study recommended several areas of improvement for the RCRA Enforcement Program. They were, to strategically target enforcement actions to protect public health and the environment, to publicize enforcement actions, to seek higher penalties to maximize deterrence, and to improve State-Federal relations. During FY 1992, the RCRA Program continued to implement these recommendations and place a strong emphasis on enforcement.

Penalties continue to increase under the 1990 RCRA Civil Penalty Policy. For example, the average civil judicial penalty rose to $777,260.41, an increase of over $100,000 from the FY 1991 figure of $668,714.23. Overall the RCRA program saw its second highest civil judicial penalty total, $9.3 million. Combined with the FY 1991 civil judicial total of $10 million, these figures show a dramatic increase in civil judicial penalties from the FY 90 figure of $3.9 mulion and FY 89 figure of $4.3 million. Penalties in administrative enforcement actions also increased, with the average proposed penalty rising from $160,000 in FY 91 to $208,062.50 in FY 92. Since FY 89, final administrative penalties have more than quadrupled, rising from $17,208 in FY 89 to $ 77,364 in FY 92.

During the past year, the RCRA enforcement program continued to emphasize strategic targeting through its success in a number of national enforcement initiatives while simultaneously grappling with the effects of the decision in Shell Oil Co. v. EPA, 950 F.2d 741 (D.C. Cir. 1991). The Shell Oil decision vacated and remanded the "mixture" and "derived-from" rules, two significant RCRA regulations relating to the identification of hazardous waste. Despite the Shell Oil decision, the RCRA program had a very strong showing under all of the traditional indicators of enforcement success. This was reflected in the six national enforcement initiatives announced last year that included RCRA cases: the RCRA illegal operator initiative, the U.S-Mexican border enforcement actions, and the four multi-media initiatives to address pulp and paper manufacturing, metal manufacturing and smelting, industrial organic chemical manufacturing and the pollutant benzene.

Significantly, the Illegal Operator Initiative launched a long-term effort to identify and take enforcement action against persons not complying with RCRA requirements. In the first federal-state RCRA enforcement initiative, EPA and nine states announced on February 4, 1992 the filing of fifty enforcement actions targeting avoiders of the nation's hazardous waste management system. Over $20 million in penalties were assessed against generators and transporters of hazardous waste and owners and operators of facilities who have disregarded the reporting requirements of RCRA. Several criminal actions were also announced, including five guilty pleas and six indictments involving illegal hazardous waste activities. Half of the federal administrative actions and one of the criminal indictments included in the initiative were brought against illegal handlers of waste that became hazardous under RCRA's Toxicity Characteristic. The states and EPA regions used a wide variety of investigatory techniques in order to locate facilities that failed to notify authorities of hazardous waste activities, from the use of sophisticated computer databases to using the yellow pages and following up on tips received from the general public.

The RCRA program contributed six of the eight cases in the Benzene Initiative with assessed penalties of $600,000. For the Pulp and Paper, Primary Metals and Industrial Organics Initiatives, the RCRA program contributed 9 cases with assessed penalties of over $4 million. Supported by a grant from OWPE, the Midwest Environmental Enforcement Association engaged in a six month investigation of hazardous waste transporters for compliance with hazardous waste and hazardous materials regulations. Seven states participated in a one week inspection initiative along major interstates and at weigh stations. The majority of the hazardous waste transporters' violations were for transportation related violations.

During the FY 92, the import and export notification program expanded and will continue to expand into the foreseeable future. Internally OWPE is developing an expanded monitoring and tracking system to regulate the movement of imported and exported wastes. Externally, two new international agreements are expected to increase the number of notifications, both import and export.

The RCRA program also continued to emphasize a balanced enforcement program through the use of a mix of all of its tools: criminal, administrative, and civil judicial enforcement. In FY 92, civil judicial referrals continued to increase, from 16 in FY 89, 18 in FY 90, 34 in FY 91 to 40 in FY 92. In the civil judicial context, RCRA enforcement has been enhanced by the establishment of several important precedents. A significant example of this was the Sixth Circuit decision in U.S. et. al. v. Production Plated Plastics, Inc. et. al., (6th Cir. 1992). In that decision, the United States Court of Appeals for the Sixth Circuit affirmed two significant District Court decisions which 1) held a corporate officer personally liable as an owner and operator of a treatment, storage and disposal facility, and 2) granted injunctive relief through summary judgment, rejecting a defense based on impossibility of compliance.

Toxic Substances Control Act Enforcement (TSCA)

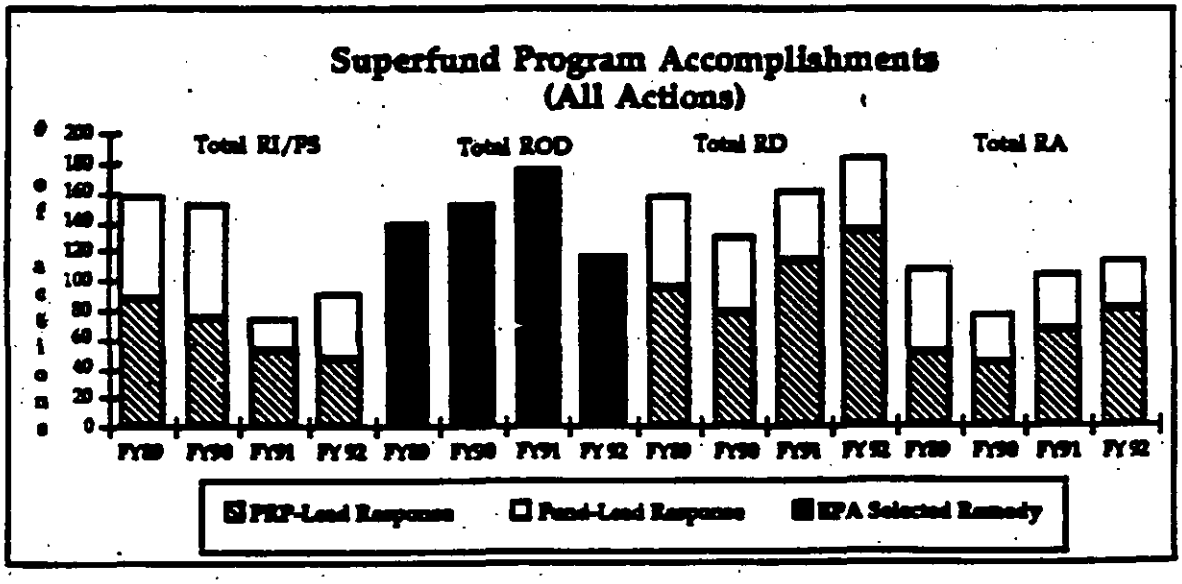
TSCA §8(e) Compliance Audit Program (CAP)

During FY 1992, EPA launched the TSCA §8 (e) CAP, a first-of-its-kind voluntary audit program designed to achieve the Agency's goal of obtaining any outstanding §8(e) substantial risk information, and provide maximum encouragement for companies to voluntarily audit their files. Under the CAP, companies agreed to register for the program, conduct a corporate-wide audit for TSCA §8(e) reportable information, and pay stipulated penalties for each study reported up to an overall $1,000,000 ceiling. Those companies violating TSCA §8(e) and not volunteering for the CAP could be subject to penalties of $25,000 per day per violation. More than 120 companies (excluding subsidiaries) registered for the CAP. Phase One reporting of TSCA §8(e) health effects information was nearly completed by the end of FY 1992 (Phase 2 reporting of environmental effects information should be completed in late 1993).

Approximately 7,000 studies have been submitted under the CAP, with estimates of total stipulated penalties ranging from 10 to 20 million dollars.

Superfund Enforcement

FY 1992 was another outstanding year for the Superfund Enforcement Program. The program reached 241 settlements valued at greater than $1.4 billion with potential responsible parties (PRPs). (This equals with FY 1991 when the value of total PRP response work was estimated to exceed $1.4 billion.) Of this amount, approximately $1.3 billion was for §106 or §106/107 remedial (RD/RA) settlements (versus $1.1 billion in FY 1990). In FY 1992 the Agency referred 48 §106 or §106/107 consent decrees for RD/RA to the Department of Justice, for remedial work estimated at $819.1 million (71 consent decrees worth $834 million were referred in FY 1991). In FY 1992 the Agency issued a total of 110 unilateral administrative orders (UAOs), versus 137 in FY 1991, and 135 administrative orders (versus 132 in FY 1991) on consent were signed with PRPs. Of the total of the 110 UAOs issued, 45 UAOs were issued under §106(a) for RD/RA work (48 were issued for RD/RA in FY 1991). At the end of FY 1992 PRPs were in compliance with 42 of the UAOs issued for RD/RA; these were valued at $481.8 million. Under §107 and §106/107, the Agency referred 75 cases to DOJ seeking cost recovery for past costs worth $137.4 million (as opposed to 73 referrals seeking $164.8 million in FY 1991). Since the inception of the Superfund Program in 1980, PRPs have committed to response actions worth over $7 billion. The percentage of PRP leads at NPL sites (under enforcement consent decrees or administrative orders) for remedial design (RD) and remedial action (RA) responses has increased to 73% for RD and 72% for RA respectively (Federal Facilities excluded). When SARA was passed in FY 1987 the percentage of PRP leads at NPL sites was 27% for remedial designs, and 37% for remedial actions.



B. Regional Office Accomplishments

Region I - Boston
(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

During FY 1992, Region I further refined its efforts to build a multi-media focus into its enforcement programs and to emphasize strategic targeting in selecting facilities for inspections and enforcement. These efforts affected nearly all aspects of the enforcement process, including policy formulation, inspections, case selection, settlement negotiations, and data collection.

The Region's Enforcement Workgroup, which includes representatives of all the Region's enforcement programs, continued to play a lead role in developing policies for, and overseeing, multi-media enforcement. For example, early in the year, the Workgroup held a round table discussion of the national and regional enforcement initiatives planned for the year and designated contacts to coordinate the Region's participation in each initiative. This coordination helped the Region make significant contributions to the Agency's national enforcement initiatives for FY 1992, particularly those against the pulp and paper, primary metals, and industrial organic chemicals industries.

Building on its successful pilot project last year, Region I required EPA inspectors to use a multi-media checklist during all inspections. This checklist contains key questions under each of EPA's regulatory programs to help an inspector determine evidence of possible violations of a program other than the one for which the inspection is being conducted. The Region conducted a new pilot project involving the inspectors' review of the IDEA (Integrated Data for Enforcement Analysis) print-out for a facility before conducting an inspection. With the multi-media information available through the IDEA system, the inspectors were able to obtain a snapshot of the facility's compliance status and history under each EPA program before the inspection.

Continuing its multi-media approach to Federal facilities, Region I conducted multi-media inspections at four federal facilities in FY 1992. The follow-up actions to these inspections are being coordinated among the EPA programs in which violations were discovered and with the states.

The Region also further refined its multi-media case screening process for any facility slated for enforcement. The standard practice is now for the case team to review the IDEA print-out and Toxic Release Inventory report for the violating facility and then communicate, via the Region's Local Area Network, with enforcement contacts in all programs for additional information about the facility. This procedure provides the enforcement case team with a complete picture of the environmental status of the violating facility.

To complement the use of IDEA, Region I relies on its own multi-media enforcement tickler system (METS), which includes information about planned inspections and enforcement actions, as well as enforcement actions already initiated.

The two most significant multi-media enforcement actions handled by the Region in FY 1992 were both judicial RCRA/Clean Water Act, multi-facility actions. In the Dexter case, the Region achieved a record-setting $13 million settlement. In the other case, significant progress was made toward negotiation of another multi-million dollar settlement.

In negotiating settlements to enforcement actions in FY 1992, Region I actively encouraged innovative provisions for supplemental environmental projects (SEPs), in addition to the payment of cash penalties and correction of the violations. By the end of FY 1992, the Region had achieved a total

of more than sixty settlements with SEPs. Many of the SEPs were pollution prevention projects that involved toxics use reduction or recycling. The most cases with SEPs arose under TSCA and EPCRA.

What these developments show is a continuing commitment in Region I in FY 1992 to pursuing a holistic environmental enforcement program to get maximum leverage from inspections and enforcement actions and that targets inspection and enforcement resources for the maximum environmental benefit.

Region II - New York
(New Jersey, New York, Puerto Rico, Virgin Islands)

Region II had a record year in a number of categories: multi-media inspection activity; multi-media referrals; penalties assessed; value of Superfund work secured through enforcement; and value of Superfund penalty and treble damages judgments.

At the same time, the Region remained strong in other areas of traditional measurement. They exceeded FY 1991 outputs and had their second strongest year ever in the number of new judicial litigation referrals. The total number of new administrative cases was slightly down from their record FY 1991 level, but the number of administrative case settlements was up. The value of administrative penalties proposed and assessed during the year was also the second highest ever.

Region II continued its aggressive implementation of multi-media enforcement. Under the auspices of the Regional Multi-Program Enforcement Steering Committee, major consolidated inspections including nearly every Regional program office were carried out at 13 facilities. A number of these yielded evidence of violations in one or more program areas. The Region's inspections of the Puerto Rico Electric Power Authority (PREPA) gave rise to what is probably the largest litigation referral Region II has ever prepared, addressing violations of five different statutes at all five PREPA facilities visited, with potential penalties totaling millions of dollars. A detailed discussion of the multi-media enforcement program follows below.

Judicial penalty assessments resulting from settled and adjudicated cases totaled $5.6 million in FY 1992, nearly 50% above the Region's previous record of $3.8 million last year. In fact, in FY 1992 Region II's water enforcement program accounted for more judicial penalty assessments than the entire regional judicial enforcement program in FY 1991.

Administrative penalty proposals contained in FY 1992 administrative complaints totaled $25.3 million; for the second year in a row, proposed ad-ministrative penalties in five separate programs exceeded $1 million (Air, EPCRA, RCRA, UST and CWA), and three individual complaints proposed penalties exceeding $1 million. This is one measure of the significance of the cases which the Region is pursuing through the use of the administrative enforcement tools. Administrative penalty assessments (in settlements and adjudicated decisions) totaled nearly $3.9 million, only slightly less than the Region's FY 1991 record level. Total judicial and administrative penalty assessments were thus $9.5 million, a record for Region II.

The accomplishments of the Region's Superfund program were also impressive. The total dollar value of the CERCLA enforcement program in FY 1992 exceeded half a billion dollars -- nearly half again as much as all past years combined, and over one quarter of the national FY 1992 total. The total included nearly $476 million in work secured through Superfund enforcement mechanisms (including Federal facility agreements), $28.5 million in cost recovery case resolutions, and a striking $5.5 million in settlements and court judgments for CERCLA civil penalties and treble damages, more than the total of all previous CERCLA penalty and treble damage settlements and awards.

Region III - Philadelphia
(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

Multi-media enforcement is a priority both at the national and regional level. Region III has developed strategies and an initiatives for multi-media enforcement. Following are significant accomplishments of Region III's multi-media efforts during FY 1992.

Approximately 42 multi-media inspections were conducted or coordinated this year by Regional Environmental Services Division staff. They were targeted mostly through Regional multi-media initiatives and the enforcement screening process. During these 42 multi-media inspections, over 270 individual program inspections were conducted.

Region III established a comprehensive case screening program which identified potential multi-media enforcement cases, improved civil/criminal coordination and enhanced docket management and used innovative enforcement techniques. The entire Region III significant noncompliance case inventory, over 225 cases, was screened during FY 1992 in a series of program-specific screening meetings. From these meetings, over 55 cases were evaluated for potential multi-media action.

The Region's Risk Based Enforcement Workgroup is identifying risks and working to reduce or eliminate those risks through the creative use of all of the Agency's authorities. The Workgroup uses the following basic steps: 1) Identify a pool of sites with high potential for unaddressed risks. 2) Select sites from the pool for risk reduction projects. 3) Perform a risk screening to identify significant risk situations at selected sites. 4) Identify technical fix(es) for each significant risk situation at selected site. 5) Identify all sources of leverage available to the Agency to obtain implementation of the identified fix(es). 6) Develop a strategy to use the leverage to obtain the fix. 7) Implement the strategy. 8) Reassess/revise the strategy/report accomplishments.

The Workgroup identified sites with high potential for having unaddressed risks. The Site Screening Team reviewed toxicity/potency adjusted TRI data, media specific compliance data bases, media specific risk indicators (i.e. CERCLA HRS Scores, Water § 304(l) lists, RCRA NCAP lists), and information regarding geographic priorities. The Workgroup selected 10 sites for risk reduction projects in FY 1992. Six sites had been selected in FY 1991.

The Workgroup conducted risk screenings at the 10 FY 1992 sites. At each site, the risk screening began with a multi-media screening inspection. The multi-media screening inspections included an examination of plant processes, a review of the site's TRI reports, completion of a multi-media screeping checklist, and a visual inspection of the physical plant. The activities needed to complete the risk screening at each site depended on the results of the screening inspection. Follow up activities for various sites included a full multi media inspection, sampling inspections, single media inspections, multi-media information request letters, and single media information request letters.

The Workgroup achieved full risk reduction at one site in FY 1992. The identified risk situation, dioxin loading to a river, was eliminated. Partial risk reduction was achieved at six sites. The mechanism by which the risk reduction was achieved varied from site to site. At two sites, one or more of the risk situations identified by the Workgroup had quick, inexpensive solutions which the company implemented immediately upon being notified of the concern. At two other sites, the risk reduction was accomplished via media specific enforcement actions targeted at the identified risk situation. At the remaining three sites, risk reduction was accomplished through negotiations with the site operator.

Chesapeake Bay/Federal Facilities Initiative

In a continuing focus on multi-media compliance within the Chesapeake Bay watershed, Region III made significant progress. In the NPDES Program, Bay SNC rates at only two percent were well below the regional average rate of 8.6% and the national rate of nine percent. In an expanded phase of the Chesapeake Bay Federal Facilities Multi-Media Compliance Initiative, the Region brought the number of facilities with violations in any program, down to just three facilities bay-wide.

Further progress in the Chesapeake Bay restoration effort requires having risk based environmental priorities to better target enforcement resources. The Bay Targeting Strategy is a guide for using data in a multi-media approach, to more precisely target enforcement program actions to address the priority areas of environmental concern in the Chesapeake Bay watershed. At the August 1992 Chesapeake Bay Executive Council meeting, EPA announced plans for a comprehensive State and Federally coordinated Multi-Media Initiative for the Chesapeake Bay using the Targeting Strategy.

Support for National and Regional Enforcement Initiatives

Region III had eight of the 11 actions filed or issued nationally on August 4, 1992 for the benzene initiative. Originally, there were over 20 potential cases being evaluated by the various program offices (RCRA, Superfund, Water, and Air). Six actions were administrative and two were judicial.

A national initiative was conducted on May 20, 1992 to file a cluster of cases under the new CAA administrative authority. As part of this effort, the Region initiated five air pollution control-related administrative penalty cases with a total proposed penalty amount of $[illegible]7,600.

As a result of its Pennsylvania Municipal Sewage Treatment Plant Initiative, the Region filed nine separate administrative penalty actions under §309(g) of the CWA on March 13, 1992, against municipal sewage treatment plants in Pennsylvania for failure to properly implement local Pretreatment Programs as mandated by the Act and their NPDES permits. Pretreatment Programs assure that industrial waste that is discharged to sewage treatment plants does not pass through the plants and degrade the receiving waters, does not interfere with the treatment plant's ability to treat, does not contaminate the sewage sludge, and does not endanger plant workers.

Region III undertook several enforcement actions to ensure the sanctity of its information gathering authorities. Actions included an administrative enforcement action based upon failure to respond to a RCRA § 9005 information request letter and an inspection pursuant to RCRA § 3007 after EPA initiated an administrative enforcement action against the company where the company argued unsuccessfully before an Administrative Law Judge that the Region was precluded from using its RCRA §3007 information gathering authority due to the pending enforcement action. Finally, on February 3, 1992 U.S. District Court Judge Cahn issued a favorable opinion in a civil action upholding EPA's information gathering authorities under §104(e) of CERCLA after a two day trial. Judge Cahn held the length of delay in fully responding (700 days) was per se unreasonable and assessed a civil penalty.

During FY 1992, the Region originated a landfill initiative under the asbestos NESHAP program to identify sources of asbestos containing waste material (ACM) who did not notify EPA or state agencies of asbestos renovation or demolition projects as required by the asbestos NESHAP regulations. This initiative enabled inspection of landfills in Maryland, West Virginia, and Pennsylvania and identification of potential generators who sent material without complying with the asbestos rules.

Region IV - Atlanta
(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Region IV demonstrated a strong commitment to multi-media enforcement by successfully completing a total of 67 consolidated multi-media inspections. Region IV accomplished this while also increasing their output totals for civil judicial referrals from 32 in FY 1991 to 35 in FY 1992, an increase of 9%. At the same time, Region IV's administrative penalty orders increased from 95 in FY 1991 to 188 in FY 1992, an increase of 98%. Additionally, Region IV was involved in several regional multi-media geographic initiatives as well as the national enforcement initiatives.

Region IV developed a plan to cleanup a major natural gas pipeline contaminated with PCB (Tenneco). This protocol involves TSCA, CERCLA, the Corps of Engineers and regions affected by the contamination (II, III, IV, V and VI) and is the largest TSCA case ever undertaken. The cleanup costs could approach a half billion dollars at 23 sites. EPA shall incur minimal cost for this cleanup and the calculated penalty is in excess of $25 million dollars.

Region IV's RCRA program assessed the largest penalty amounts in Region IV's history totaling $20 million dollars. This is a significant increase over FY 1991 $2 million dollars. RCRA also implemented the BIF Initiative which should regulate the release of toxic substances from 41 facilities. The results of the first 22 inspections found 49 major violations with proposed penalties of $6.8 million dollars.

Region IV actively supported the nationally managed Louisiana Pacific case. Region IV referred two facilities for action, the OSB plant in Center, Georgia, and the medium density fiberboard plant in Clayton, Alabama. Both facilities were cited for violations of the Prevention of Significant Deterioration of Air Quality (PSD) regulations of the Clean Air Act.

Region IV's NPDES program enforcement actions are among the highest in the nation. The program referred seven civil and one criminal case, had 53 administrative penalty orders and 116 administrative orders. NPDES made extensive use of Supplemental Environmental Projects (SEP's): six of the APO's settled this year contained SEPs valued at a total of $4,197,581.

Region IV's 404 enforcement program issued 30 §309 (a) Administrative Orders, seven §309 (g) Penalty Orders and 22 final Consent Orders. Region IV resolved the Hendley 404 wetlands case to include relocation of two houses, restoration of wetland condition over much of the site and donation of the wetland portion of the property to a state university. This successfully handled a major national issue and set a national precedent.

Region IV took 239 actions to enforce the Safe Drinking Water Act in FY 1992. In addition, two final penalty orders were issued in the amount of $8,375 and 25 cases were closed due to systems returning to compliance. Region IV completed twice as many actions during FY 1992 than FY 1991.

Again, Region IV was the leader in criminal enforcement. For the fourth year in a row, Region IV has led the nation in the number of referrals to the Department of Justice. On July 12, 1992 environmental officials announced that a grand jury had returned a seven count indictment charging the illegal exportation of hazardous waste to a third world nation, the first such indictment in the Agency's history.

Region V - Chicago
(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Region V continued its Geographic Enforcement Initiatives commenced in FY 1991 for the Southeast Cook County and Northwest Indiana area. This geographic enforcement initiative made significant progress in achieving commitments under the FY 1992 Great Lakes Action Plan and in integrating risk- based multi-media enforcement into regional operations. New geographic enforcement initiatives are scheduled for FY 1993 and FY 1994.

In FY 1992, the Region took the initiative to ensure that safe drinking water would be provided to all segments of the Amish Communities. This effort was made with two goals in mind: 1) to have the Amish communities realize the importance of monitoring their school wells for contamination; and 2) to have other Amish schools informed of their responsibilities. Complaints to Amish schools were issued on December 27, 1991 and February 21, 1992. Both systems had violated administrative orders and had numerous violations of the Maximum Contaminant Level (MCL) and monitoring requirements for bacteriological contamination. The enforcement actions stressed the importance of the drinking water monitoring requirements and the importance of preventative maintenance. Both schools have agreed to pay a penalty for past violations and agreed to remain in compliance with the regulations.

Region V brought 23 Clean Air Act enforcement actions pursuant to the Agency's new administrative penalty authority. Nine of these cases were filed on May 20th as part of an enforcement cluster in which 52 cases were commenced nationwide. The Region filed nine complaints alleging that the respondents had failed to certify compliance with Federal regulations limiting volatile organic material emissions in the Chicago metropolitan area. Five of the cases enforce New Source Performance Standards (NSPS) which require the installation and certification of hydrogen sulfide emission monitors on fuel gas combustion devices that burn refinery fuel. The remaining actions enforce a broad variety of Clean Air Act regulations, including sulfur dioxide emission limitations, air toxic standards for asbestos removal during building demolition and renovation, opacity and suspended particulate standards, and NSPS which limit nitrogen oxide emissions from nitric acid plants. These actions address violations that occurred within 12 months prior to issuance of the complaints through the assessment of penalties below $200,000. Region V's proposed penalties range from $25,000 to $176,600. Three of the Region's administrative enforcement actions for penalties were resolved in FY 1992. Region V issued the first CAA Consent Agreement and Consent Order in the nation on July 31, 1992.

Region V issued the first administrative subpoena in the country to an asbestos removal contractor on May 19, 1992. Region V had received conflicting accounts of activities at an asbestos removal site and the employee was called in to clear up the discrepancies. The results of the deposition were used to aid in determining the required enforcement strategy in the matter.

The Region V Air and Radiation Division Petroleum Refinery Task Force (Refinery Task Force) was formed in December 1991, as part of a national petroleum refinery initiative to ensure that petroleum refineries comply with applicable regulations. Region V includes 22 petroleum refineries. Since its inception, the Refinery Task Force has worked to gather detailed information about each Region V refinery. A total of 28 inspections were conducted at 19 of the 22 Region V refineries. The Task Force has also sent out 19 Information Requests to 12 refineries. The Task Force has issued 10 Findings of Violation/Notices of Violation for, among other things, monitoring violations and emissions violations. Penalties totaling $499,815 have been proposed in seven of the actions and Administrative Complaints have been filed in six cases. Settlements totaling $241,800 have been reached in three cases and one of the first CAFOs in the country was recently filed in Region V for a petroleum refinery case.

State and Local Accomplishments: During FY 1992, Region V organized Environmental Criminal Task Forces with cities throughout the Region. The cities include Chicago, Milwaukee, Twin Cities, Springfield, Indianapolis, Cincinnati, and Cleveland. The task forces include the U.S. Attorney, the local FBI offices, State Attorney Generals and State environmental agencies, State law enforcement agencies, major metropolitan sewer authorities, and county health agencies. These task forces are designed to coordinate law enforcement efforts, enhance law enforcement response in prosecution, as well as to develop training for other agencies.

Region VI - Dallas
(Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

Terrero Mine Superfund Site, Pecos, San Miguel County, NM: This site, located in, and adjacent to, a National Wilderness Area is an abandoned mine waste site with high concentrations of lead (Pb) contaminated leachates migrating to a small wetlands habitat and Wild and Scenic River (The Pecos). As the area is impacted by extreme weather conditions (heavy winter snowfall), response activity is restricted to about five months during the year. In that the PRPs at the site are the United States Forest Service, two agencies of the State of New Mexico and a major mining corporation, there is a significant challenge in coordinating agency policies affecting other Federal Agencies, State and Municipal policies and a mine waste exemption concerns. Upon discovery and determination of the release at the end of September 1991, Regional Enforcement efforts initiated an effort to encourage an immediate voluntary response action by the parties identified to stabilize and mitigate the impact of any discharges to the wetlands and river during the Spring runoffs. All of the PRPs joined in this effort, with the New Mexico Environment Department (NMED) overseeing all non-federal response actions. Response actions included fencing and securing of the site, dust suppression measures on roadways and tilling in of limestone dust on the waste pile to assist in neutralizing leachates which might discharge in the following Spring. The U.S. Forest Service, using their concurrent authorities, took similar actions in the recreation areas of the National Wilderness.

During the winter period, the PRPs developed design plans for the diversion of runoffs, the remediation of State owned campgrounds (consolidation of contaminated materials back to the mine site) and the installation of monitoring wells at the mine site. In the Spring the PRPs commenced to implement these approved actions on a voluntary basis. The pre-remedial actions vastly accelerated clean-up at the site, which is currently being reviewed for ranking, and is expected to contribute significantly to future remedial actions should they become necessary. The voluntary response actions have been monitored to ensure consistency with the NCP.

In FY 1992 the Hazardous Waste Management Division issued nine consent agreements and final orders, with the highest assessed penalty being $900,000. The Division obtained commitments for over $300,000 in pollution prevention projects over the next 3 years and is currently negotiating for an additional $3 million in pollution prevention projects. The Division referred one case to DOJ for civil judicial action and supported litigation in four cases.

Since September 1990, Region VI has been developing a hazardous waste tracking system to merge and compare Mexican hazardous waste shipment authorizations with U.S. Manifests to confirm movement of hazardous wastes from Maquiladoras to facilities in the United States. The database provides reports showing volumes, types, foreign generator, and ultimate disposition of waste.

In March 1992, EPA transmitted to SEDESOL the Spanish version software to handle Mexican data. EPA and SEDESOL developed a workplan in June 1992 with milestones for subsequent stages of database development. SEDESOL transmitted their 1987 - 1991 import and export Guia Ecologica database to EPA in July 1992. This database is currently being integrated into the HWTS. The tracking

system is being utilized to develop a Maquiladora suspect list and to target EPA/SEDESOL cooperative facility visits. The tracking system also serves as a tool to identify illegal hazardous waste shipments.

Region VI coordinated with SEDUE in hosting the Fourth Annual Maquiladora Conference in November, 1991, in Ciudad Juarez, Mexico. Mexico's regulations for hazardous waste were presented on the first day and U.S. regulations on the second day. The Region joined with SEDUE in conducting six cooperative facility visits to U.S. and Maquiladora companies to review compliance with U.S./Mexico hazardous waste requirements. Three visits to the U.S. facilities were multimedia inspections.

The EPCRA § 313 program in Region VI has attempted to focus its enforcement response activities on Supplemental Environmental Projects (SEPs) as opposed to collecting only fines. As a result, this Region entered into six Consent Agreements/Consent Orders stipulating SEPs during FY 1992. Examples of the benefits of the SEPs are: A company which was going to install a system using hydrochloric acid to purify water for cleaning glass for mirrors instead eliminated the use of HCl at the facility by installing a reverse osmosis system. Two companies installed semi-aqueous cleaning systems that will eliminate most of the use of Freon 113. A facility will replace at least 50% of its coatings to water base or powders within a year. The facility will also install a powder paint booth system and is doing a report on how to convert finishes to water base and powders.s

Region VI has utilized the FIFRA § 27 referral procedure, when necessary, to track potentially serious violations or to impose Federal penalties in cases where State action has not been adequate. One case in Arkansas involved 35 violations for the use of 2,4-DB on rice, a crop for which 2,4-DB is not registered. A total of $19,000 in Federal penalties has been proposed by Region VI in this case, the largest penalty in history for a pesticide violation in Arkansas.

Insecticide Chalk - In FY 1991, Region VI discovered a large shipment of unregistered insecticide chalk imported from China. The shipment was held by the U.S. Customs Service, and subsequent investigation of the chalk distribution by the Texas Department of Agriculture and Region VI staff resulted in an enforcement case in FY 1992.

Region VII - Kansas City
(Iowa, Kansas, Missouri, Nebraska)

During FY 1992, Region VII restructured its organization to build a multi-media perspective into all phases of its enforcement efforts. A multi-media committee consisting of all Program Compliance Chiefs, the Regional Criminal Enforcement Contact and Special Agent in Charge, the Office of Regional Counsel Branch Chiefs, the Regional Counsel, and the Deputy Regional Administrator, meets monthly. A number of subcommittees with specific assignments were designated from this group.

Region VII, although the eighth smallest region, generally ranks in the top half of the Regions on numbers of enforcement actions taken. The strong combined enforcement responses by the Region and its states has resulted in consistently high compliance rates across all media.

The Iowa Attorney General's Office has established an "environmental crime team" to expand and enhance Iowa's criminal enforcement program. In FY 1992, the unit, (one full-time prosecutor and one full-time investigator), investigated or filed charges in 30 cases and obtained guilty pleas in four cases. The guilty pleas involve water pollution violations for which significant fines were levied. Part time assistance is to the unit is provided by the Department of Natural Resources.

In negotiating settlements, Region VII continues to encourage innovative forms of relief. In FY 1991 and FY 1992 combined, the Region used SEPs in settlement of over 85 cases under TSCA, FIFRA, and

EPCRA – leading the country in settlements using SEPs under those statutes. In 10 administrative cases alleging violations of TSCA PCB regulations settled during FY 1992, Region VII achieved significant environmental benefits through the use of SEPs in the settlement of those cases, negotiating Consent Orders requiring the disposal or reclassification of 80 PCB Transformers and 135 PCB-Contaminated Transformers, at a cost to Respondents in excess of $1.8 million.

Region VII participated in a number of national enforcement initiatives, including the CAA Administrative Penalty Case Initiative. On May 20, 1992, Region VII filed five cases as part of a national CAA initiative using the new administrative enforcement authority. Three cases addressed violations of the asbestos NESHAP regulations and two cases cited violations of the new NSPS Subpart J regulation requiring installation of continuous emission monitoring systems at petroleum refineries. One of the Subpart J cases was a multi-media action, alleging violations of the TSCA PCB regulations, as well as the CAA.

Region VII is committed to maintaining a strong federal/state enforcement program. Recognizing that most of the programs which can be delegated to the states have been in the Region, they have invested time and resources in helping their states develop and utilize their enforcement capacity. The result of this effort has been an improved relationship between EPA and the states, and better leveraging of the increasingly scarce state and federal resources.

Iowa: Sara Lee Corporation and Jimmy Dean Manufacturing Company have paid a $100,000 civil penalty for pretreatment violations which occurred at the Jimmy Dean Pork slaughterhouse located in Osceola, Iowa. In a separate criminal action, Jimmy Dean was sentenced to pay $20,000 for one count of negligent discharge into the municipal sanitary sewer system. In addition, the company was required to pay $16,500 for fish killed as a result of the illegal discharge, $2,500 for state investigative costs, and a $6,000 criminal surcharge.

A Belle Plaine automotive parts manufacturer will pay $78,000 after pleading guilty to one count of water pollution for intentionally dumping waste oil into the city sewer system. The plant's general manager was charged and sentenced to pay $10,300.

The American Milling Company, a barge operator, pled guilty to three counts of intentionally discharging raw sewage directly into the Mississippi River and has agreed to pay over $98,000 for the violations. Investigation by the Iowa E-Team and the U.S. Coast Guard discovered that a towboat owned by the company had altered its sewage system to dump raw sewage directly overboard while en route downstream from St. Paul, Minnesota. The company was charged with three separate counts of pollution for each day it was in Iowa waters.

Missouri: Under a recent agreement with the Missouri Attorney General, the Miracle Recreation Equipment Company will pay $27,612 for alleged violations of the state's hazardous waste laws. The company, a manufacturer of recreation equipment, generates hazardous wastes including polyvinyl coating wastes, waste oil acetone and paint wastes in the manufacturing process. Specifically, Miracle Recreation allegedly failed to: properly close oil and solvent waste drums; label and date the contents of the drums; have a secondary containment system in place in the event of an accident or spill; provide adequate aisle space in the waste storage area; keep accurate records; and conduct weekly inspections.

Cargill, Inc., a Kansas City, Missouri soybean extraction plant which uses hexane, a volatile organic compound (VOC) in its process, failed to obtain a permit for a major modification. Cargill and the Kansas City Health Department signed an agreement which requires the source to test the dryer for VOCs and to pay a $100,001 penalty. The MDNR issued 66 Notices of Violations.

Nebraska: Platte Chemical Company will pay a penalty of $99,000 in settlement for alleged violations of Nebraska's hazardous waste regulations, including: storage of hazardous waste for over 90 days; failure to properly document hazardous waste shipments; failure to label hazardous waste containers as hazardous waste, inadequate cleanup of hazardous waste discharges; failure to conduct weekly inspection of hazardous waste storage areas; and failure to provide hazardous waste training to facility personnel. The company, which manufactures ready-to-use agricultural chemicals and pesticides, denied the state's allegations, but has agreed to pay the civil penalty to settle the case. Site cleanup is estimated at nearly $400,000.

Nebraska and Timmerman and Sons Feeding Company, Inc. reached a settlement over alleged violations of state livestock waste discharge regulations. The company's NPDES permit allows livestock waste to be discharged from the site only during unusual precipitation conditions; however, inspectors observed livestock waste flowing from retention facilities to a nearby creek at a time when precipitation conditions were not unusual. The company will pay a $5,500 civil penalty, and submit a strategy and schedule intended to bring the feed lot operation into compliance with the company's NPDES permit, and state surface water quality and livestock waste control regulations.

Safety Kleen has agreed to pay a civil penalty of $20,000 for alleged failure to adequately inspect and analyze waste received at its Gering facility in violation of the hazardous waste storage permit issued by the Department of Environmental Quality. In addition, Safety Kleen's Omaha Facility was cited for improperly working overfill/spill control equipment which resulted in a hazardous waste storage tank being overfilled. Subsequently, the company spent a total of nearly $26,000 to redesign the hazardous waste storage tanks at its three Nebraska facilities to prevent a similar recurrence. Although Safety Kleen denied any violations occurred at the Omaha facility, it paid a civil penalty of $5,000 to resolve the case.

Region VIII - Denver
(Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

During 1992, Region VIII implemented and capitalized upon a number of organizational, operational, and management efforts to improve its enforcement program. As a partial result of these efforts, the Region increased the numbers of civil judicial actions referred to DOJ by 10% and increased its administrative enforcement activity by over 25%.

In the realm of multi-media enforcement, Regional and State of Colorado inspection teams conducted 50 multi-media inspections as part of the Sand Creek Pilot Project. In addition to Sand Creek efforts, the Region undertook 35 multi-media inspections at other sites. Four targeted comprehensive inspections were conducted by joint State/EPA teams. Indications are that all of these targeted inspections will result in enforcement actions. During the year, the Region identified over 28 additional potential multi-media actions, and initiated 10 such actions. More importantly, however, efforts undertaken during the year not only increased the numbers and types of enforcement actions initiated, but also improved the quality of enforcement undertaken.

The level and quality of enforcement achieved by the Region was in part the result of a variety of organizational and management changes initiated in FY 1991 and fully implemented and utilized during FY 1992. These included the activities of a full time Regional Enforcement Officer, operations of newly reorganized multi-media offices in the Environmental Services Division and Policy and Management Division, and increased operations of the Enforcement Standing Committee.

The Office of Multi-Media Enforcement in the Environmental Services Division directed and improved the Region's initial efforts to undertake targeted multi-media inspections. Multi-media

teams, consisting of EPA and State inspectors and led by the new multi-media coordinators, conducted comprehensive targeted inspections at four major facilities.

The multi-media Office of Strategic Integration (OSI) improved Regional integration of enforcement actions by increasing use of enforcement data bases, case screening and inspection targeting capabilities. Working with the office of the Regional Enforcement Officer, specialized expertise was developed in OSI to assist in evaluating and directing potential multi-media cases in the Region. Training in case screening and the Integrated Data for Enforcement Analysis (IDEA) system was provided to all enforcement programs. The case screening process was revised to meet program-specific needs and to fully utilize the IDEA system to increase evaluation of all cases.

The Region also expanded its enforcement targeting capabilities. Using the IDEA system as the foundational data base, potential multi-media sites were identified and input and evaluation sought from the Regional and State enforcement programs. Sites initially identified for multi-media coverage were scored, ranked and jointly selected by the Region and the States. The Region also conducted a separate evaluation of Federal facilities, focusing on risk, noncompliance and pollution prevention potential as the primary targeting criteria. This targeting exercise was then integrated into the existing targeting program and allowed the Region to select Federal facilities for inclusion in the National Federal Facility Initiative during 1993.

During 1992, the Region participated in cross program, multi-media, and national enforcement initiatives. The Region has targeted a number of Federal facilities for multi-media inspections and anticipates participation in the National Federal Facilities Initiative during 1993. The Region contributed actions to the National Enforcement Clusters including the industrial organic chemical, and primary metal, and benzene clusters. The Region also participated in the National Pollution Prevention Initiative, the Data Integrity/ Toxic Release Inventory Initiative and the Cross Program Inspection Checklist Initiative.

The Region participated in a number of national program-specific enforcement initiatives. This included the New Clean Air Act Administrative Order Authority Initiative, the Resource Conservation Recovery Act Non-notifier Initiative, and the National NPDES Pretreatment Initiative. A short summary of the enforcement highlights of the Air, Water, and Waste Divisions follows.

The RCRA program provided leadership in the Regions multi-media efforts exemplified by the RCRA multi-media inspector leading three of the four targeted comprehensive inspections conducted by the Region. The Underground Storage Tank (UST) enforcement program began to fully utilize Field Citation Authorities, issuing over 63 such citations and collecting over $20,000 in penalties. RCRA enforcement collected over $6.6 million in penalties, nearly doubling previous year's efforts. As part of the Powder River Basin coal company geographical initiative, twelve multi-media inspections conducted in 1991 resulted in six enforcement actions in 1992.

In the Superfund remedial program, innovative efforts were undertaken at the Annie Creek Mine Tailings site, utilizing water authorities to expedite cleanup. Significant settlements were obtained including settlement with seven parties associated with the Smuggler site, innovative use of RCRA and CERCLA authorities at the U.P. Baxter site to obtain 100% cost recovery, and an agreement with the Atlantic Richfield Company to conduct site remediation estimated to cost $25 million. The Region also executed de-minimis settlements with twenty two parties associated with the Lowry Landfill Site.

The Region contributed three actions to the Clean Air Act Administrative Order Initiative. The Air program undertook efforts to increase State capacities by participating in a joint pilot training program with Regions IX, X, and the California Air Resources Board, providing satellite training capabilities, and by strengthening enforcement agreements with all states in the Region.

The NPDES program participated heavily in the National Pretreatment Initiative with five judicial and four administrative actions initiated as part of this effort. During 1992, the NPDES program focused on building State capacities to improve and implement penalty policy applications. The wetlands program maintained its high level of enforcement activity and in addition implemented an initiative to educate the public about wetland related violations and enforcement activities.

During the year, the Region and the Denver Area Office of the Criminal Investigation Division worked closely on a number of criminal investigations and cases. These included the Rockwell International case in which Rockwell pled guilty to felony counts and agreed to pay $18,500,000.

Targeting inspection and enforcement of high risk Class V wells involves targeting potentially "Hazardous Wastes" as defined under RCRA - thus resulting in "multi-media" enforcement. The Region targeted several "non-Indian" operators on "Indian Lands" to obviously assert jurisdiction and insure "environmental equity". The tribes were kept informed of these actions.

Region IX - San Francisco
(Arizona, California, Hawaii, Nevada, Trust Territories)

In FY 1992, Region IX's enforcement initiatives included actions taken against polluters on the U.S.-Mexico Border and the South San Francisco Bay Cost Recovery Initiative. The Mexico Border initiative involved 17 federal and state actions, including two criminal indictments, seeking more than $2 million in penalties.

EP'. announced, June 3, 1992, the first enforcement actions in the United States resulting from efforts outlined in the Integrated Environmental Plan for the Mexican-U.S. Border Area. All of the state and federal actions involved violations of U.S. environmental laws in the border area, or violations of U.S. laws governing trans-boundary shipments of hazardous wastes or toxic substances. U.S. federal enforcement resulted in two criminal indictments and 10 civil actions for violations of federal air, toxic substance, community right-to-know, and waste laws.

Also on June 3, the Mexican government announced environmental inspection and supervision activities in Mexican states along the U.S. border to verify compliance in the Maquiladora industry with Mexico's environmental laws and regulations. As a result of these activities, the Secretariat of Social Development (SEDESOL), Mexico's environmental agency, ordered the shut down of eight noncomplying facilities and the forfeiture of surety bonds posted by an additional four companies. Notices of infractions were issued against another 22 facilities.

The U.S. federal criminal indictments were handed down in two cases that involved the illegal exportation of hazardous wastes to Mexico. One of the cases was developed as a result of cooperative efforts by customs officials of both countries, with assistance from a number of U.S. local, state and federal environmental and law enforcement agencies. A tip-off by Mexican customs officials, after refusing an alleged bribe at the border crossing, resulted in the indictment of Sbicca of California, ..., of El Monte, California and three of its employees who were transporting hazardous waste into Mexico illegally. In the second case, Ignacio Lopez, the operator of a Calexico, California, transportation company was charged with illegally shipping a number of different types of hazardous waste into Mexico. The case was investigated with the cooperative assistance of Mexico's environmental agency, as well as the U.S. Customs Service, EPA, and the Imperial County Health Department.

Eight of the civil actions were recently filed EPA administrative enforcement actions, and two were judicial actions. In addition, California took four actions, and Arizona filed one action, enforcing air and hazardous waste laws in the Mexican border area of these states.

SOUTH SAN FRANCISCO BAY COST RECOVERY INITIATIVE

As part of an initiative begun in FY 1991 to recover costs at 20 state-lead Superfund sites located in Silicon Valley south of San Francisco, EPA resolved 15 of the cases either by payment in full of past costs demanded or settlements of past and future costs under CERCLA §122(h) administrative authority. Through demand letters to the owners and/or operators of the South Bay facilities, EPA demanded reimbursement of approximately $5.6 million. Through payments or subsequent settlements, EPA received commitments for recovery of $3.4 million. Three cases are still in the midst of active negotiation while the two remaining cases have been referred and filed in federal district court seeking a total of $518,000 in past response costs and a declaratory judgment that EPA is entitled to recovery of any future response costs incurred.

Since the early 1980s, the State of California, through its State Water Resources Control Board and Regional Water Quality Control Board ("RWQCB"), has actively pursued the clean-up of contaminated groundwater at the South Bay sites. By the time many of these sites were placed on the National Priorities List, the RWQCB had already used state enforcement authorities to order potentially responsible parties ("PRPs") to investigate and clean-up the South Bay groundwater contamination. In 1985, EPA awarded RWQCB federal money under the Multi-Site Cooperative Agreement ("MSCA") to oversee the PRP studies and clean-up. Using federal funds, RWQCB, acted as the lead CERCLA agency overseeing the PRPs work. The cost recovery commitments reimburse EPA for the federal MSCA monies awarded to the RWQCB as well as EPA's intramural and extramural costs.

Region X - Seattle
(Alaska, Idaho, Oregon, Washington)

Building upon groundwork laid in FY 1991, the Region X Office of Enforcement had success in several areas in FY 1992: more sophisticated targeting based on risk in multi-media inspections; a 30 percent increase in multi-media inspections; continued expansion of states' roles in targeting and inspections; an unprecedented Joint Operating Agreement with the State of Washington; and stronger emphasis on pollution prevention through Special Environmental Projects (SEPS) in settlement agreements. The Region settled 25 administrative cases with SEPs in FY 1992, with a total cost to the companies involved of at least $2,154,500. Commitment to national multi-media cluster initiatives resulted in participation in the industry specific, pulp and paper, benzene and primary metals clusters.

EPA received authority to issue CAA administrative penalty complaints in March 1992. Region X issued the first three administrative penalty complaints in the nation on March 19, 1992, and led all other Regions in total number of cases (14) filed in the national administrative case initiative on May 20, 1992. Region X issued a total of 17 administrative penalty complaints in FY 1992. The Region also settled six of these administrative cases in FY 1992, one of which was the first national CAA settlement to contain a SEP. The SEP was worth over $1 million.

Six of these cases cited oil refineries for failing to install and calibrate continuous emission monitors for hydrogen sulfide. Six cases involved opacity violations of sawmills in Northern Idaho. These cases were developed as part of an ongoing project Region X undertook in FY 1991 to evaluate the effectiveness of the state's rules in controlling emissions of inhalable particulate matter, which focused on the wood products industry in the Idaho Panhandle. The remaining five cases involved violations of the asbestos regulations in Alaska and Idaho. (These two states are not delegated authority to implement and enforce the Asbestos NESHAP program.)

The Region X Superfund program continues to emphasize enforcement actions to compel responsible party cleanups at Superfund sites. The Region issued 12 administrative orders, referred

five cases to Headquarters and/or the Department of Justice, and negotiated Interagency Agreements for cleanup of four federal facility Superfund sites during fiscal year 1992.

Region X was the first in the nation to negotiate and sign a CERCLA 120 (e)(6) RI/FS Consent Order for a federally owned facility. This Order was signed by EPA and a private PRP generator, for the Standard Steel & Metals Salvage Yard Superfund site. EPA also negotiated and signed four Federal Facility Agreements (FFAs), two in Idaho and two in Alaska. These three-party agreements (EPA, state and federal facility) provide the framework, including the schedule, for the cleanup of these installations. At the Hanford site, the existing FFA and Consent Order were renegotiated to add new milestones and restrictions on the discharge of liquid effluents. These new milestones establish cease discharge dates for 15 additional disposal sites, as well as imposing new flow rate limits and total volume discharge restrictions.

Penalty amounts in the Toxic Release Inventory program are proportional to number of chemicals and years of failure to report. As the program goes into its fifth enforcement year, penalties for facilities which have never complied can be in the hundreds of thousands of dollars. Although a substantial portion of this is collected in cash, the Agency also utilizes the settlement process as an opportunity to convince facilities to make environmentally beneficial expenditures which reduce emissions. When this occurs, the facility receives a partial credit for the capital expenditures and this mitigates a portion of the total assessed penalty. The Region's EPCRA program entered into 12 settlement agreements with such terms in FY 1992.

In FY 1992, the Regional FIFRA program made a special effort to enforce pesticide requirements for grain and hay fumigation. Grain and hay fumigation have been a major source of pesticide complaints for a number of years. Failure to carefully follow label directions can result in serious injury and death to fumigators, grain inspectors and other workers. Region X issued four civil complaints, alleging illegal use of the fumigant aluminum phosphide, a restricted use pesticide. In addition EPA conducted a joint field operation with the Oregon Department of Agriculture and the U. S. Department of Transportation in which grain trucks were stopped and inspected.

The RCRA enforcement program continued to implement the new RCRA penalty policy which became effective in November 1990. In FY 1992, the average penalty per administrative complaint was $552,540 (seven actions), up from $207,000 in FY 1991 and $53,000 in FY 1990. The Region and the State of Washington were major participants in the "illegal operators" enforcement initiative issuing three administrative complaints and referred one case to DOJ as part of the national effort.

FY 1992 was a landmark year for UST enforcement. The Region issued its first civil complaint, with multiple alleged violations ranging from failure to provide leak detection for, and notification of, existing tanks, to inadequate followup of a suspected release, for which the proposed penalty totaled $368,244. Fourteen requests for information were sent to facilities in FY 1992 after state, local governments, or citizen involvement made EPA aware that a potential problem existed.

Appendix

Historical Enforcement Data

National Penalty Report

List of Headquarters Enforcement Contacts

List of Regional Enforcement Information Contacts

EPA CIVIL REFERRALS TO THE DEPARTMENT OF JUSTICE
FY1972 TO FY1992

	FY72	FY73	FY74	FY75	FY76	FY77	FY78	FY79	FY80	FY81
AIR	0	4	3	5	15	50	123	149	100	66
WATER	1	0	0	20	67	93	137	81	56	37
SUPERFUND	0	0	0	0	0	0	2	5	10	2
RCRA	0	0	0	0	0	0	0	4	43	12
TOXICS/PESTICIDES	0	0	0	0	0	0	0	3	1	1
TOTALS	1	4	3	25	82	143	262	242	210	118

	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92
AIR	36	69	82	116	115	122	86	92	102	86	92
WATER	45	56	95	93	119	92	123	94	87	94	77
SUPERFUND	20	28	41	35	41	54	114	153	157	164	137
RCRA	9	5	19	13	43	23	29	16	18	34	40
TOXICS/PESTICIDES	2	7	14	19	24	13	20	9	11	15	15
TOTALS	112	165	251	276	342	304	372	364	375	393	361

EPA ADMINISTRATIVE ACTIONS INITIATED (BY ACT)
FY1972 TO FY1992

	FY72	FY73	FY74	FY75	FY76	FY77	FY78	FY79	FY80	FY81
CAA	0	0	0	0	210	297	129	404	86	112
CWA/ SDWA	0	0	0	738	915	1128	730	506	569	562
RCRA	0	0	0	0	0	0	0	0	0	159
CERCLA	0	0	0	0	0	0	0	0	0	0
FIFRA	860	1274	1387	1614	2488	1219	762	253	176	154
TSCA	0	0	0	0	0	0	1	22	70	120
TOTALS	860	1274	1387	2352	3613	2644	1622	1185	901	1107

	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92
CAA	21	41	141	122	143	191	224	336	249	214	354
CWA/ SDWA	329	781	1644	1031	990	1214	1345	2146	1780	2177	1977
RCRA	237	436	554	227	235	243	309	453	366	364	291
CERCLA	0	0	137	160	139	135	224	220	270	269	245
FIFRA	176	296	272	236	338	360	376	443	402	300	311
TSCA	101	294	376	733	781	1051	607	538	531	422	355
EPCRA									206	179	134
TOTALS	864	1848	3124	2609	2626	3194	3085	4136	3804	3925	3667

EPA CRIMINAL ENFORCEMENT
FY1982 TO FY1992

	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92
Referrals to DOJ	20	26	31	40	41	41	59	60	65	81	107
Cases successfully prosecuted	7	12	14	15	26	27	24	43	32	48	61
Defendants charged	14	34	36	40	98	66	97	95	100	104	150
Defendants convicted	11	28	25	40	66	58	50	72	55	82	99
o Months sentenced			6	78	279	456	278	325	745	963	1,135
o Months served			6	44	203	100	185	208	222	610	744
o Months probation		534	552	882	828	1,410	1,284	1,045	1,176	1,713	2,478

STATE ENVIRONMENTAL AGENCIES
JUDICIAL REFERRALS AND ADMINISTRATIVE ACTIONS
FY 1985 TO FY 1992

ADMINISTRATIVE ACTIONS

	FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92
FIFRA	8,899	6,055	5,922	5,078	6,698	4,145	3,245	3,095
WATER	2,936	2,827	1,663	2,887	3,100	3,298	3,180	2,748
AIR	448	760	907	655	1,139	1,312	1,687	1,411
RCRA	459	519	613	743	1,189	1,350	1,495	1,389
TOTAL	12,742	10,161	9,105	9,363	12,126	10,105	9,607	8,643

JUDICIAL REFERRALS

	FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92
WATER	137	221	286	687	489	429	297	204
AIR	182	162	351	171	96	156	190	258
RCRA	82	25	86	46	129	64	57	112
TOTAL	401	408	723	904	714	649	544	574

Prior to FY 1990, the State FIFRA Administrative Action total included warning letters.

NATIONAL PENALTY REPORT

OVERVIEW OF EPA FEDERAL PENALTY PRACTICES

FY 1992

May 1993

Compliance Policy and Planning Branch
Office of Enforcement

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Criminal Enforcement	Richard Emory, OE
Clean Water Act–NPDES	
Judicial	David Drelich, OE
Administrative	Ken Keith, OWEC
Safe Drinking Water Act	
UIC	Peter Bahor, ODW
PWSS	Anne Jaffe Murray, ODW
CWA–Wetlands Protection	Tim Whitehouse, OWOW
CWA–Oil Protection Act	Cecilia Smith, OSWER
Marine and Estuarine Protection	Catherine Crane, OW
Stationary Source Air	Jerry MacLaughlin, OE Cletis Mixon, SSCD Marie Muller, SSCD
Mobile Source Air	Marcia S. Ginley, OMS Tiffany Schauer, OMS
RCRA	
Judicial	Catherine Smith, OE
Administrative	Karin Ashe, OWPE
EPCRA § 302-312 and CERCLA § 103	Peter Moore, OWPE
CERCLA § 104-109	Michael Northridge, OE
Toxics Release Inventory, TSCA and FIFRA	Rose Burgess, OCM David Meredith, OCM

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NATIONAL PENALTY REPORT
OVERVIEW OF EPA FEDERAL PENALTY PRACTICES

FY 1992

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I. EXECUTIVE SUMMARY

This report summarizes the penalty practices of EPA in FY 1992 in civil judicial, administrative and criminal enforcement actions. Penalties are only one measure of the enforcement efforts of the Agency and reflect only a portion of the consequences of violating federal environmental statutes in large part since State or local enforcement constitutes the major of enforcement actions. Information on Supplemental Environmental Projects (SEPs) embodied within enforcement settlement agreements is included for the first time this year in an attempt to further capture the scope of the Agency's enforcement efforts.

General Findings

- Fiscal Year 1992 set another record for penalties assessed by EPA, with $78.7 million in civil penalties and $62.9 in criminal fines (before suspension). This was due primarily to a two and a half fold increase in penalties assessed under the Stationary Source Air program and a four-fold increase over FY 1991 in the amount of criminal fines assessed.

- In FY 1992 alone, EPA assessed some 28% of all civil penalties and criminal fines combined, assessed in EPA's history ($508.4 million for FY 1972-1992).

- EPA has obtained almost $400 million in cash civil penalties from FY 1974 through FY 1992 in some 14,174 civil judicial and administrative cases.

- In FY 1992 alone, 19.6 percent of all civil penalty dollars in EPA's history were obtained.

- In the last two years, 30 percent of all civil penalty dollars in EPA's history were assessed.

- Criminal fines totaled $62.9 million in FY 1992 (before deducting suspended sentences). This represents a four fold increase from FY 1991 and is the highest amount ever assessed by EPA for criminal cases. Ninety-four years of incarceration were imposed (before suspension), up from 75 years imposed in FY 1991.

- In the six years EPA's criminal enforcement program has been tracking penalty data, $106.7 million in criminal fines and 392 years of incarceration have been imposed before deduction of suspended sentences. In FY 1992, 59% of all criminal fines in EPA's history were assessed.

- Penalties were obtained in 85 percent of the cases concluded in FY 1992.

- Four hundred and nine SEPs were negotiated during FY 1992 with a total estimated value of $50.1 million. Pollution Reduction SEPs comprised 59 percent ($29.7M) of the estimated dollar value of all SEPs, and Pollution Prevention SEPs comprised another 31 percent ($15.7M) of the total estimated value.

Program Highlights

- This year for the first time, the Penalty Report also includes administrative penalties assessed under the Clean Water Act §311 as amended by the Oil Pollution Act (hereafter referred to as CWA §311) and judicial penalties assessed under CERCLA 104, 106, 107.

- Federal penalty dollars were dominated by CWA* with 29% of the total. Stationary Source Air was second with 25%, followed by RCRA (17%) and TSCA (10%). CERCLA 104, 106, 107 cases assessed 8% of the total penalty dollars while EPCRA §313 and Mobile Source Air contributed 4% and 3% respectively.

- Five programs supplied 76% of the cases. TSCA had the highest number of cases with 20% followed by FIFRA with 17%, CWA with 16%, Mobile Source Air with 14%, and EPCRA §313 with 9%. All five programs rely heavily on administrative enforcement.

- The Stationary Source Air program and FIFRA programs assessed higher total penalty dollars than in FY 1991.

  In descending order of total penalties assessed, these programs were the following: CWA, Stationary Source Air, RCRA, TSCA, CERCLA 104, 106, 107, EPCRA § 313, Mobile Source Air, FIFRA, UIC, EPCRA § 302-312 and Marine and Estuarine Protection. The largest increase for these programs over last year's totals was 254% for Stationary Source Air.

- Medians reached record highs for judicial cases in the Mobile Air, SDWA and UIC programs.

- The largest penalty assessed in FY 1992 was $6.7 million** obtained in a Stationary Source Air judicial case. This was higher than the largest penalty assessed in FY 1991 (a CWA case for $6,184,220). The second largest penalty was assessed in a RCRA and CWA judicial case which settled for $3,500,000 in a federal/state joint case ($2 million federal/$1.5 million state). Additional programs with highest penalties greater than $500,000 included CWA judicial, CERCLA 104, 106, 107, Mobile Source Air judicial, and TSCA administrative.

- The Mobile Source Air program made the most frequent use of SEPs (187), followed by the EPCRA and TSCA programs (both with 82). The Mobile Sources compliance program negotiated 94% of all the Public Awareness SEPs, the EPCRA-313 compliance program negotiated 84% of all of the Pollution Prevention SEPs, and the TSCA compliance program negotiated 55% of all of the Pollution Reduction SEPs.

II. PURPOSE, SCOPE AND LIMITATIONS OF THIS REPORT

This overview report summarizes the penalty practices of EPA in FY 1992 in civil judicial, administrative, and criminal enforcement actions. Except where specifically noted, the term "penalties" is used in this overview to refer only to civil (administrative and judicial) penalties, not criminal fines.

This report does not attempt to portray a complete picture on penalties obtained during enforcement of federal environmental laws, because it does not reflect penalties obtained by state or local

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*Throughout the report, Wetlands actions refer to CWA §404. CWA §402 and pretreatment actions are referred to as CWA actions. This is the fifth year Wetlands penalties have been presented separately in this report. They were included as part of Clean Water Act data in penalty reports prior to FY 1988.

**The single highest penalty in the Agency's history was $15 million assessed under TSCA and RCRA in the Texas Eastern Pipeline case in FY 1990.

governments, either directly or through court actions with EPA. States conduct the vast majority of enforcement actions under these laws, working through programs approved by EPA to carry out federal requirements.

It also does not include all categories of penalties. In FY 1993, EPA plans to include additional information on stipulated penalties, contempt actions, multi-media penalties and State/federal split penalties in this report. Although these penalties are not currently incorporated into the report, they can represent an important part of the program's efforts to achieve compliance. For example, in FY 1992, $3.1 million in stipulated penalties was assessed in one RCRA case.

This also is the first year that Supplemental Environmental Projects (SEPs) that the Agency negotiated during FY 1992 as part of consent orders or decrees are included in the annual National Penalty Report. The collection, analysis and (to the extent possible) quantification of SEP data is part of the Agency's overall effort to describe the overall impact of enforcement settlements. The SEP analysis in this report is based upon data obtained from a pilot project in which the Regions and programs provided (where feasible) estimates of the dollar value of implementing SEPs in enforcement settlements contained in FY 1992 judicial and administrative enforcement cases.

Programs Covered

Fourteen EPA penalty programs are addressed in this report. Table 1 gives their names, the types of enforcement cases each used in FY 1992, and any acronyms by which they are cited in this report. SEP data was provided by the TSCA, EPCRA, RCRA, CWA, CAA-OMS, CAA-SSCD, CERCLA and FIFRA programs.

Cases Covered

The penalties discussed in this report focus on cash amounts assessed in EPA enforcement cases that were concluded in FY 1992. They include final judgments by court settlements in consent decrees and consent orders and final administrative orders. However, for the first time in FY 1992, credits, benefit projects, or non-monetary actions which parties in enforcement cases often agree to carry out as part of a settlement (collectively referred to as Supplemental Environmental Projects or SEPs) are included in this report. Such actions may yield large environmental benefits of substantial dollar value. Narrative description of specific cases can be found in the following section.

This report does not include proposed penalties or other amounts under discussion prior to the conclusion of a case, and it does not include penalties paid to entities other than the Federal Government. Contempt enforcement actions (cases seeking to invoke sanctions for a failure to comply with a prior court order, decree, or administrative order) are not included. "Stipulated penalties" and "deferred penalties" also are not included in this report; they are penalties stipulated in an administrative or court order that are due only if the violator fails to carry out certain other requirements of the order. Nor does the report include the use of other sanctions, such as contract listing, sewer moratoriums, or the suspension or revocation of permits.

As in past reports, the FY 1992 Federal Penalty Report does not include penalties assessed in the Underground Storage Tank program (UST). The reason for this exclusion is because UST is primarily a state delegated program.

One element of this report is an analysis of the extent to which EPA used penalties in its enforcement cases. Some cases did not obtain penalties. The cases without penalties included in this report are

enforcement actions in which a penalty is authorized by the statutes and regulations on which the case is based. If Congress did not authorize EPA to assess a penalty for a given type of violation, an enforcement action for such a violation would not be counted as a case in this report.

Table 1

Penalty Programs Covered in This Report

Program	Types of cases
Criminal Enforcement	Judicial
Clean Water Act - NPDES (CWA)	Judicial Administrative
Clean Water Act - Oil Pollution Act (CWA §311)	Administrative
Safe Drinking Water Act (SDWA)	Judicial Administrative
Wetlands Protection	Judicial Administrative
Marine and Estuarine Protection	Administrative
Stationary Source Air	Judicial Administrative
Mobile Source Air	Judicial Administrative
Resource Conservation and Recovery Act (RCRA)	Judicial Administrative
Emergency Planning and Community Right-to-Know Act (EPCRA §302-312)	Administrative
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund)	Administrative Judicial
Toxics Release Inventory (TRI, or EPCRA §313)	Administrative
Toxic Substances Control Act (TSCA)	Judicial Administrative
Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)	Administrative

Penalties are counted in this report as assessed in a final administrative action or in a court order; appeals and collection of penalties are not considered here. The word "obtained" is used in this report as a general term referring to penalties that were assessed by a court or by EPA administrative orders. Its meaning is the same as "assessed" or "imposed."

Purposes and Limitations

This overview report is not an evaluation of practices by EPA programs, and it should be viewed in the context of the total enforcement effort. The report may illuminate individual characteristics of programs and provide a helpful comparison among programs. Identifying differences may stimulate further thinking about penalties in general, advancing the goal of more effective use of penalties as part of an overall enforcement program.

The reader should bear in mind that the data presented here are historical in nature, and do not necessarily represent present penalty practices. Nothing in this report may be used as a defense or guide to future settlements of federal cases involving penalties.

The specific penalty data used in this report were obtained from several federal data systems. The data have been approved by the responsible program offices, but the quality and completeness of the data may vary.

III. GENERAL OVERVIEW

Highlights

- Fiscal Year 1992 set another record for penalties assessed by EPA, with $78.7 million in civil penalties and $62.9 in criminal fines (before suspension). This was due primarily to a two and a half fold increase in penalties assessed under the Stationary Source Air program and a four-fold increase over FY 1991 in the amount of criminal fines assessed.

- In FY 1992 alone, EPA assessed some 28% of all civil penalties and criminal fines combined, assessed in EPA's history ($508.4 million for FY 1972-1992).

- EPA has obtained almost $400 million in cash civil penalties from FY 1974 through FY 1992 in some 14,174 civil judicial and administrative cases.

- In FY 1992 alone, 19.6 percent of all civil penalty dollars in EPA's history were obtained.

- In the last two years, 30 percent of all civil penalty dollars in EPA's history were assessed.

- Criminal fines totaled $62.9 million in FY 1992 (before deducting suspended sentences). This represents a four fold increase from FY 1991 and is the highest amount ever assessed by EPA for criminal cases. Ninety-four years of incarceration were imposed (before suspension), up from 75 years imposed in FY 1991.

- In the six years EPA's criminal enforcement program has been tracking penalty data, $106.7 million in criminal fines and 392 years of incarceration have been imposed before deduction of suspended sentences. In FY 1992, 59 % of all criminal fines in EPA's history were assessed.

- Penalties were obtained in 85 percent of the cases concluded in FY 1992.

The total amounts of civil penalties for each program in FY 1992 are shown in Table 2. A comprehensive summary of the programs' civil penalty data appears in Table 3. Criminal penalties are shown in Table 4. The historical picture is shown in Figures 1 and 2, displaying total penalties by fiscal year. The relative contributions of the different EPA programs to the FY 1992 totals of civil penalty dollars and number of cases with penalties are shown in Figures 3 and 4.

Table 2

Total Amount of Civil Judicial and Administrative Penalties in FY 1992

	Total dollars (%)	No. All Cases* (%)
Clean Water Act	$ 22,905,662 (29%)	269 (16%)
Judicial	17,817,997	40
Administrative	5,087,685	229
Safe Drinking Water Act	$ 481,333 (1%)	98 (6%)
Judicial	207,744	7
Administrative	273,589	91
Wetlands Protection	$ 241,300 (<1%)	22 (1%)
Judicial	300	3
Administrative	241,000	19
Clean Water Act §311 - Administrative	$ 162,542 (<1%)	22 (1%)
Marine and Estuarine Protection Administrative	$ 157,000 (<1%)	4 (<1%)
Stationary Source Air	$ 19,875,312 (25%)	76 (5%)
Judicial	19,462,267	64
Administrative	413,045	12
Mobile Source Air	$ 2,091,867 (3%)	227 (14%)
Judicial	609,080	6
Administrative	1,482,787	221
RCRA	$13,586,122 (17%)	110 (7%)
Judicial	5,927,125	11
Administrative	7,658,997	99
EPCRA § 302-312 - Administrative	$ 325,200 (<1%)	19 (1%)
CERCLA § 103 - Administrative	$ 148,450 (<1%)	14 (<1%)
CERCLA § 104, 106, 107 - Judicial	$ 6,675,558 (8%)	22 (1%)
Toxics Release Inventory - Administrative	$ 2,757,321 (4%)	150 (9%)
TSCA	$8,227,095 (10%)	325 (20%)
Judicial	5,000	4
Administrative	8,222,095	321
FIFRA - Administrative	$ 1,098,549 (1%)	286 (17%)
TOTAL	$ 78,733,341	1,644

*"Number of all cases" includes all cases with or without penalties. Percentages shown here will differ from analyses presented elsewhere in this report which are based on only those cases with cash penalties.

FIGURE 1

Federal Judicial and Administrative Penalty Assessments
FY 1977 to FY 1992

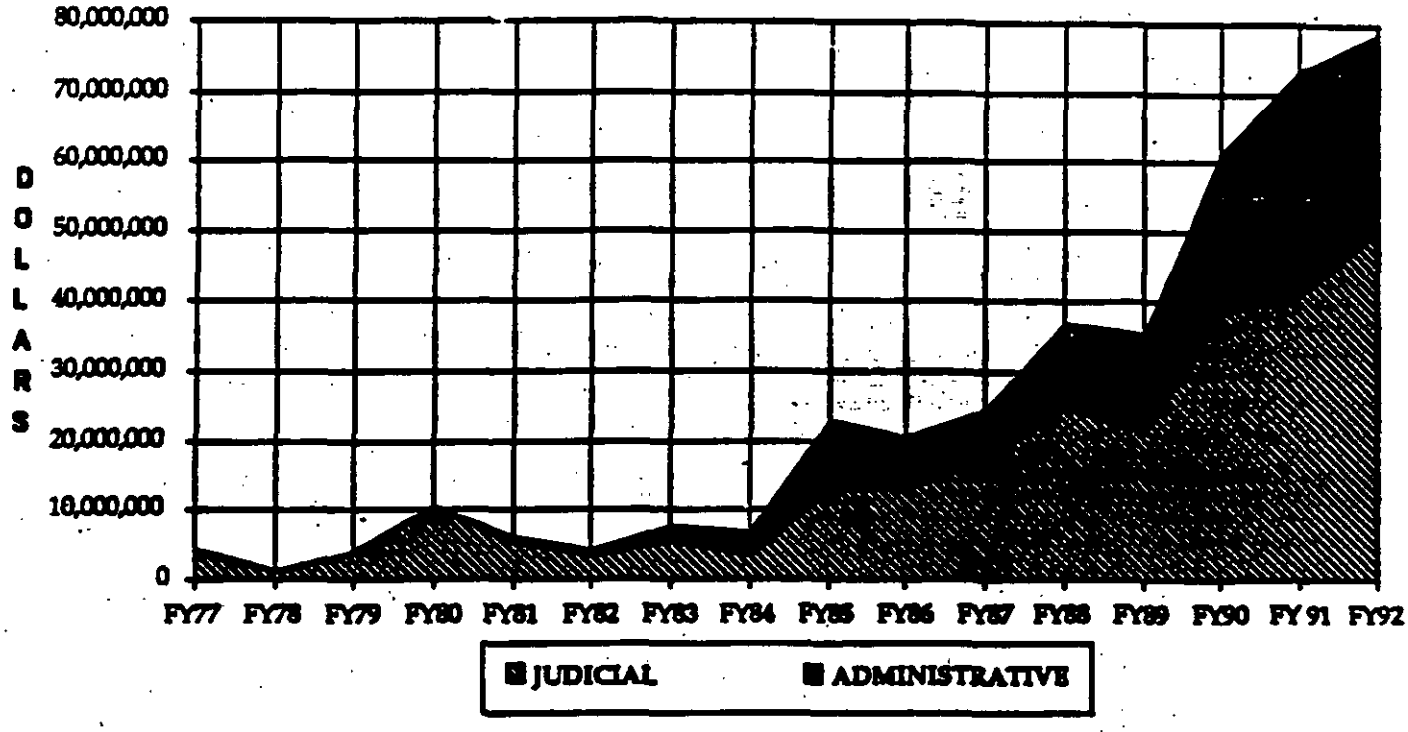


FIGURE 2

Total Penalties by Fiscal Year

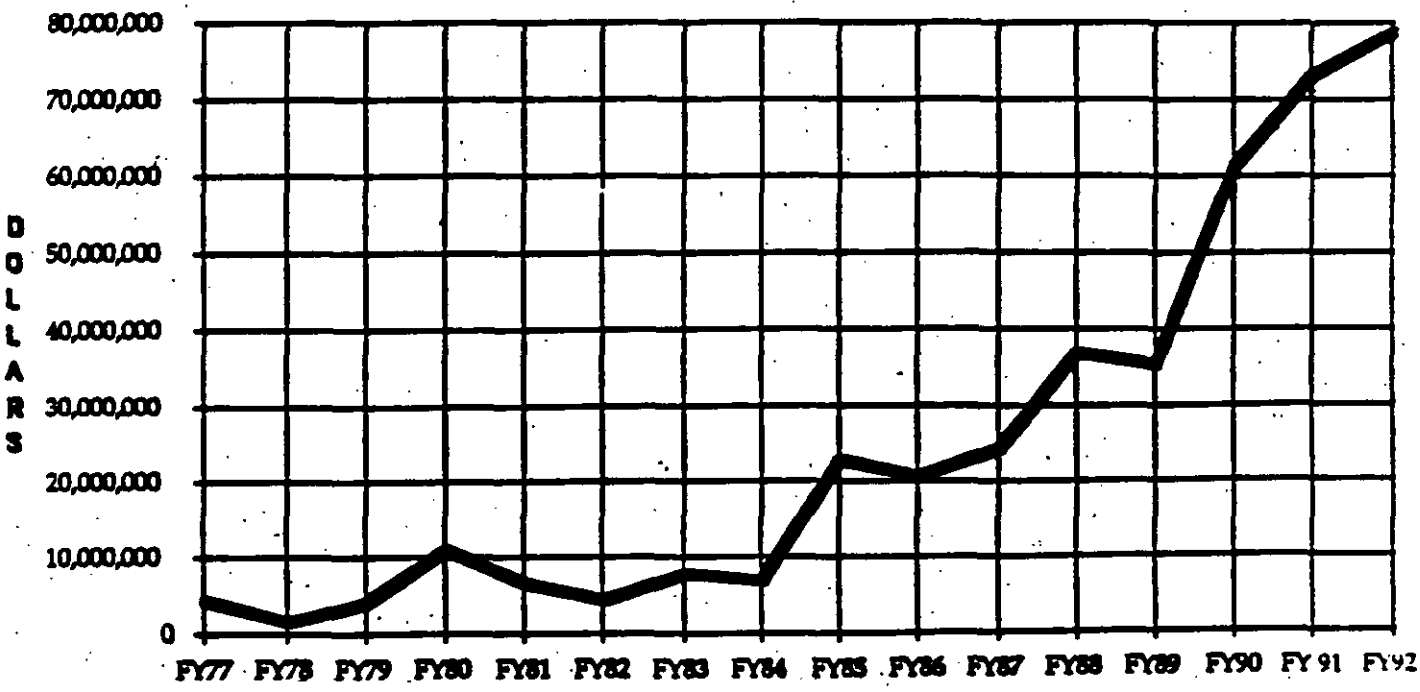


TABLE 3

SUMMARY OF CIVIL PENALTIES BY PROGRAM IN FY 1992

Program	Total Dollars	Cases with Penalty	Cases w/o Penalty	Total Cases	Percent w/Penalty	Average Penalty	Avg All Cases	Median Penalty	Med All Cases	Highest Penalty
CWA ADM	5,087,485	228	1	229	100%	22,316	22,217	6,000	6,000	125,000
CWA JUD	17,817,977	39	1	40	98%	456,871	445,449	0	0	2,958,477
CWA ADM+JUD	22,905,462	267	2	269	99%	85,789	85,151			2,958,477
UIC ADM	245,916	34	44	78	44%	7,286	3,141	4,000	0	40,000
UIC JUD	84,244	2	0	2	100%	42,122	42,122	42,122	42,122	75,000
UIC ADM+JUD	329,250	36	44	80	45%	9,146	4,116			75,000
FWS ADM	28,575	13	0	13	100%	2,198	2,198	1,400	1,400	5,000
FWS JUD	123,500	4	1	5	80%	30,875	24,700	0	0	62,500
FWS ADM+JUD	152,075	17	1	18	94%	8,946	8,449			62,500
SDWA ADM	273,589	47	44	91	52%	5,821	3,006	3,338	3,338	40,000
SDWA JUD	207,744	6	1	7	86%	34,624	29,678	29,500	75,000	75,000
SDWA ADM+JUD	481,333	53	45	98	54%	9,082	4,912			75,000
WETLD ADM	241,000	18	1	19	95%	13,389	12,684	10,000	7,200	70,000
WETLD JUD	300	1	2	3	33%	300	100	300	300	300
WETLD ADM+JUD	241,300	19	3	22	86%	12,700	10,968			70,000
MARINE ADM	157,000	4	0	4	100%	39,250	39,250	0	0	125,000
STATAIR ADM	413,045	12	0	12	100%	34,420	34,420	4,300	4,300	90,000
STATAIR JUD	19,462,267	51	13	64	80%	381,613	304,098	43,000	57,000	6,700,000
STAT ADM+JUD	19,875,312	63	13	76	83%	315,481	261,517			6,700,000
MOBAIR ADM	1,482,787	218	3	221	99%	6,802	6,709	1,200	1,200	264,680
MOBAIR JUD	609,000	6	0	6	100%	101,513	101,513	10,040	10,040	500,000
MOB ADM+JUD	2,091,867	224	3	227	99%	9,339	9,215			500,000
RCRA ADM	7,650,997	91	8	99	92%	84,166	77,264	0	0	900,000
RCRA JUD	5,927,125	10	1	11	91%	592,713	538,830	208,862	195,000	3,500,000
RCRA ADM+JUD	13,586,122	101	9	110	92%	134,516	123,510			3,500,000
EPCRA 302-312	325,200	16	3	19	84%	20,325	17,116	0	0	130,800
CERCLA 103	149,650	13	1	14	93%	11,419	10,694	0	0	70,275
TRI	2,787,321	142	8	150	95%	19,418	18,582	11,050	11,225	102,000
TSCA ADM	8,222,606	279	42	321	87%	29,670	25,614	10,200	12,800	900,800
TSCA JUD	5,000	1	3	4	25%	5,000	1,250	5,000	2,500	5,000
TSCA ADM+JUD	8,227,606	280	45	325	86%	29,362	25,314			900,800
FIFRA	1,080,540	176	108	286	62%	6,172	3,841	2,000	500	300,000
CERCLA 104,A,7	4,675,508	22	0	22	100%	303,436	303,436	50,000	50,000	1,998,336
CWA 311-OPA	162,542	21	1	22	95%	7,740	7,388	3,500	3,350	50,000
TOTAL	78,733,341	1,403	241	1,644	85%	56,118	47,891			6,700,000

FIGURE 3

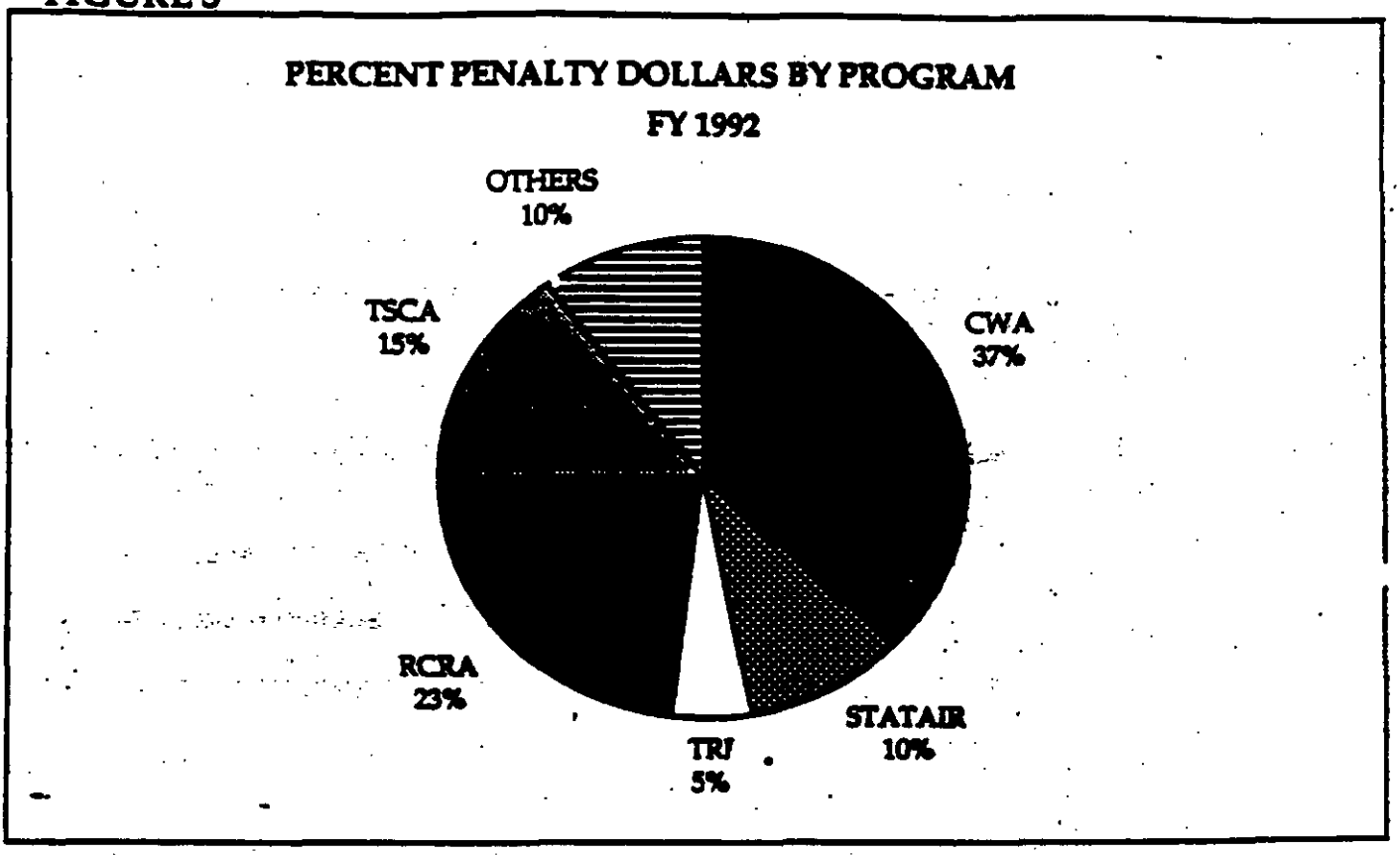


FIGURE 4

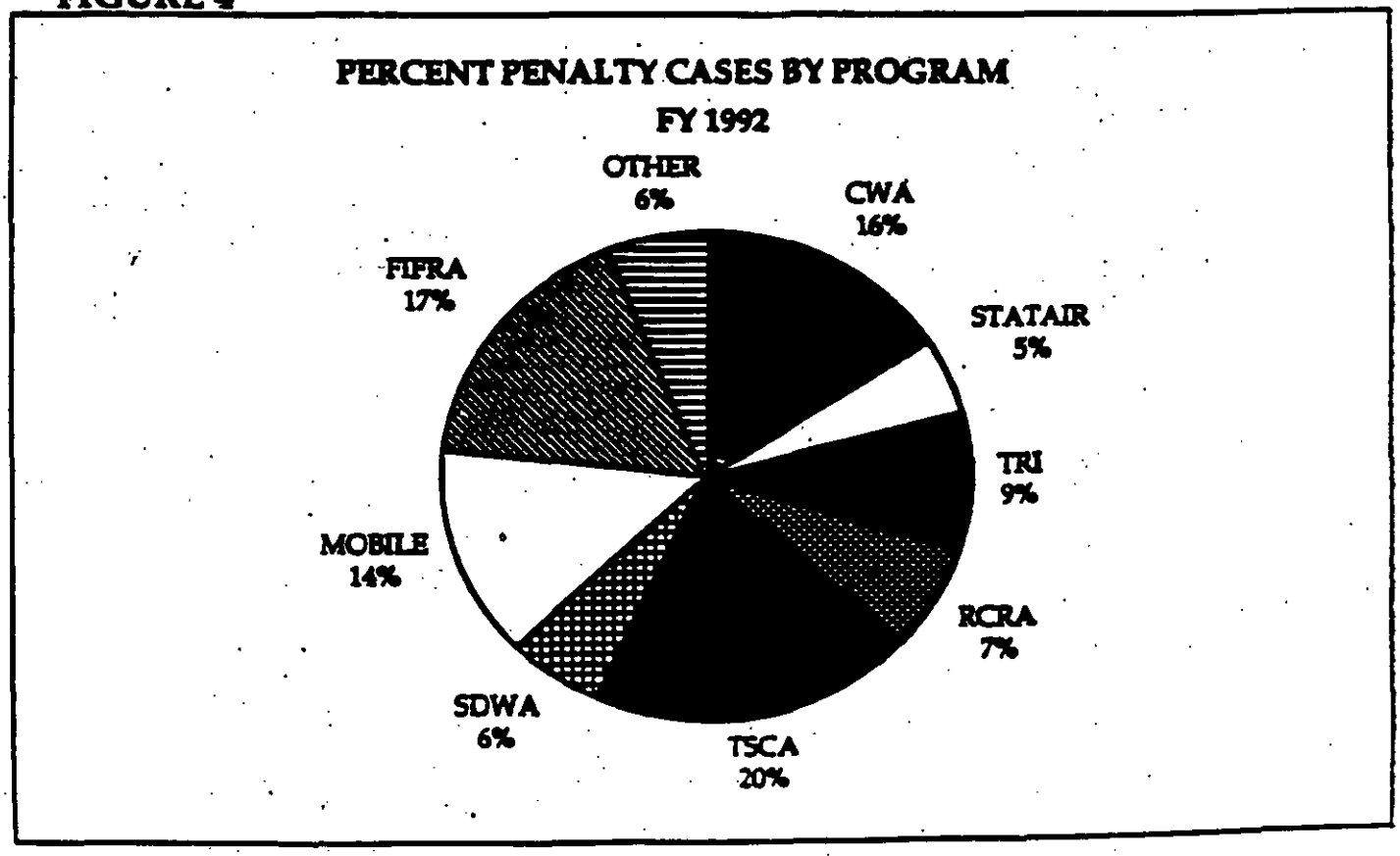


Table 4

Total Amount of Criminal Fines and Incarceration in FY 1992

Number of defendants convicted	99
Total fines assessed	
Before suspension	$62.9 million
Total months incarceration	
Sentenced (before suspension)	1,135 months (94 years)

Median and Average Penalties

This section of the report attempts to look beyond the aggregate figures to see what the typical penalties were for each program. Average and median penalty figures represent different aspects of the program.

The average penalty is the total dollars divided by the number of penalty cases in a given program. While an average is useful in seeing overall program accomplishments, it may give a misleading picture if the penalties within that program went to extremes. One high-penalty case and a large number of low-penalty cases could produce a mid-level average, even though no cases had a mid-level penalty.

The median is useful to gain a different perspective on a program without the heavy influence of a few extremely large or small penalties. The median penalty represents the middle number in the series of all penalties for a given program arranged in order of size. That is, there were as many penalties below the median as above it.

Medians - Figure 5 shows trends in medians over several years for the largest EPA penalty programs during that period. Among the programs with six years or less of penalty history, only RCRA judicial cases are shown. In the Mobile Source Air and TSCA programs, the data reflect several different penalty authorities, including some that lead to higher-dollar penalties. However, most of the cases in both these programs are in lower-dollar categories, which results in low median penalties.

Medians increased for judicial cases in the RCRA and CWA programs and remained the same for judicial cases in the Stationary Source Air program. Medians also increased for administrative cases in the RCRA and TSCA programs. The median for administrative cases in the FIFRA and Mobile Air programs remained at the same level as FY 1991.

In the foregoing discussion of change in medians, there is no mention of TSCA judicial cases or Stationary Source Air administrative cases, because there were too few cases in FY 1992 to make these categories suitable for such analysis.

- Clean Water Act: The median judicial penalty rose from its FY 1991 level of $100,000 to a record high of $225,000 in FY 1992. The median administrative penalty decreased from a high of $12,000 in FY 1991 to $6,000 in FY 1992.

- Safe Drinking Water Act: The median judicial penalty rose from $8,500 in FY 1991 to $29,500 in FY 1992. (This reflects FY 1992 medians of $42,122 for two UIC cases and $19,000 for five PWSS cases.) The median administrative penalty decreased to $3,338 in FY 1992 from $4,000 in FY 1991. (The subprogram medians both declined in FY 1992 to $4,000 for 78 UIC cases and $1,400 for 13 PWSS cases.)

- Wetlands Protection: In this fifth year of administrative penalty cases concluded by the program, the median increased to $10,000, up from $6,000 in FY 1991. The median judicial penalty dropped to $300 (for only one case) from $11,250 in FY 1991.

- Clean Water Act § 311: This is the first year the National Penalty Report has tracked this program. The median administrative penalty for FY 1992 was $3,350.

- Marine and Estuarine Protection: This program is in its third year for cases concluded and the median administrative penalty decreased from $66,050 in FY 1991 to $14,000 in FY 1992.

- Stationary Source Air: The median judicial penalty decreased to $43,000, from $48,250 in FY 1991. The record was set in FY 1987 with a median of $65,750. This year there were twelve administrative cases with a median penalty of $4,300.

- Mobile Source Air: The median judicial penalty was $10,040, reflecting only six cases. This is an increase from the FY 1991 level of $4,900 for three cases. The median administrative penalty remained at $1,200 (for 221 cases) in FY 1992, the same level as FY 1991.

- RCRA: The median judicial penalty was $75,000, down from $157,942 in FY 1991. The median administrative penalty continued rising for the ninth year in a row, also attaining a new record of $56,815.

- EPCRA § 302-312: In the fourth year of concluded cases, this program surpassed its first three years' medians with a penalty of $56,120 compared to $40,500 in FY 1991.

- CERCLA § 103: In the fourth year of concluded cases, this program's median penalty decreased from the FY 1991 level of $13,900 to $5,431 in FY 1992.

- CERCLA § 104, 106, 107: This is the first year the National Penalty Report has tracked penalties assessed under this program. The median judicial penalty for FY 1992 was $50,000.

- Toxics Release Inventory: In this fourth year of concluded cases, this program's median penalty also decreased slightly from $12,750 in FY 1991 to $11,050 in FY 1992.

- TSCA: The median administrative penalty decreased slightly to $10,200 in FY 1992 from $12,500 in FY 1991. The median judicial penalty (for just one case) was $5,000.

- FIFRA: The median penalty rose from $1,920 in FY 1991 to $2,050 in FY 1992, setting a new record for FIFRA medians.

Averages - Average civil judicial or administrative penalties increased in seven programs in FY 1992, the same as in FY 1991. Declines were evident in five programs. However, it should be noted that averages may be influenced by a few large cases. A year with one or two extremely large cases may have a much higher average penalty than a year without any, even though the latter may have had larger penalties in most enforcement cases.

Averages rose to record highs for judicial cases in the Clean Water Act and Stationary Source Air programs. For judicial cases only, averages rose in the SDWA, UIC and Mobile Air programs. For administrative cases, increases in the averages were seen in the RCRA, Stationary Air, CERCLA 103 and FIFRA programs.

Lower average penalties compared with FY 1991 were reported in administrative and judicial cases in the PWSS and Wetlands programs. For administrative cases, averages decreased in the CWA, SDWA, UIC, Marine Protection, Mobile Air, EPCRA 302, TRI and TSCA programs.

- Clean Water Act: The average judicial penalty rose to a record high of $456,871. The average administrative penalty decreased to $22,314 in FY 1992 compared to the high of $23,937 in FY 1991.

- Safe Drinking Water Act: The average judicial penalty increased from $21,152 in FY 1991 to $34,624 in FY 1991. However, the average administrative penalty decreased to $5,821 in FY 1992.

- Wetlands Protection: The average judicial penalty dropped to $300, compared to $21,563 in FY 1991. In the fifth year of administrative penalties, the average dropped to $13,389 in FY 1992 from a record high in FY 1991 of $22,113.

- Clean Water Act § 311: This is the first year that the National Penalty Report has tracked penalties assessed under this program. The average administrative penalty was $7,740.

- Marine and Estuarine Protection: In the fourth year of administrative penalties, the average decreased from $66,050 to $39,250 in FY 1992 with four cases concluded.

- Stationary Source Air: The average judicial penalty rose from $112,217 in FY 1991 to $381,613 in FY 1992. The average administrative penalty was $34,420.

- Mobile Source Air: The average administrative penalty decreased to $6,802 in FY 1992 from $11,121 in FY 1991. The average judicial penalty increased dramatically from $3,267 in FY 1991 to $101,513 in FY 1992.

- RCRA: The average judicial penalty decreased from the FY 1991 average of $668,440 to $592,713. The average administrative penalty rose substantially to $84,165, compared to $37,129 in FY 1991.

- EPCRA § 302-312: In this fourth year of concluded cases, the average penalty dropped from $29,709 to $20,325 in FY 1992.

- CERCLA § 103: In this fourth year of concluded cases, the average penalty increased from $8,550 in FY 1991 to $11,419 in FY 1992.

- CERCLA § 104, 106, 107: This is the first year the National Penalty Report has tracked penalties under this program. The average judicial penalty was $303,436 in FY 1992.

- Toxics Release Inventory: In this fourth year of concluded cases, the average penalty decreased slightly from $20,464 in FY 1991 to $19,418 in FY 1992.

- TSCA: The average administrative penalty decreased slightly to $29,470 compared to $33,867 in FY 1991. (Averages were not calculated on a TSCA program-wide basis before FY 1986.) The average judicial penalty was $5,000 for one concluded case with penalty.

- FIFRA: The average penalty rose to a new high of $6,172. For the FIFRA program, this is an increase over the FY 1991 average of $3,350.

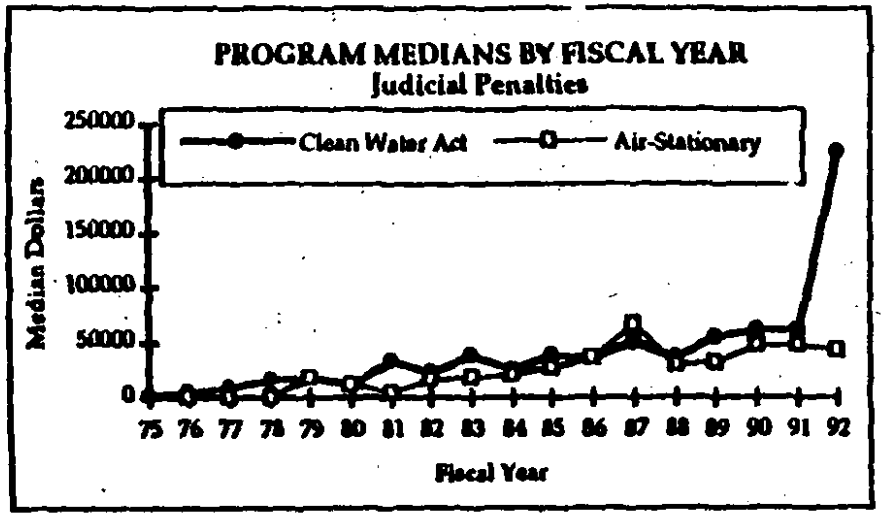
Percentage of Cases Concluded with a Penalty

A high percentage of cases were concluded with a penalty in all programs except Wetlands judicial, UIC administrative, SDWA administrative and FIFRA. Overall, 85% of administrative cases were concluded with a penalty and 87% of judicial cases assessed a penalty. This compares to 84% of all FY 1991 cases which concluded with a penalty. (See Table 3 for each program's percentage with penalty.)

Range of Penalty Amounts

This section examines how EPA's penalties in FY 1992 ranked along the scale from low dollars to high dollars. The penalty cases are sorted into eight ranges from no-penalty cases ("zero dollars") to cases of $1 million or more.

Figure 6 shows the penalty distribution of all FY 1992 cases.


PROGRAM MEDIANS BY FISCAL YEAR
Judicial Penalties
Clean Water Act
Air-Stationary
Median Dollars
250000
200000
150000
100000
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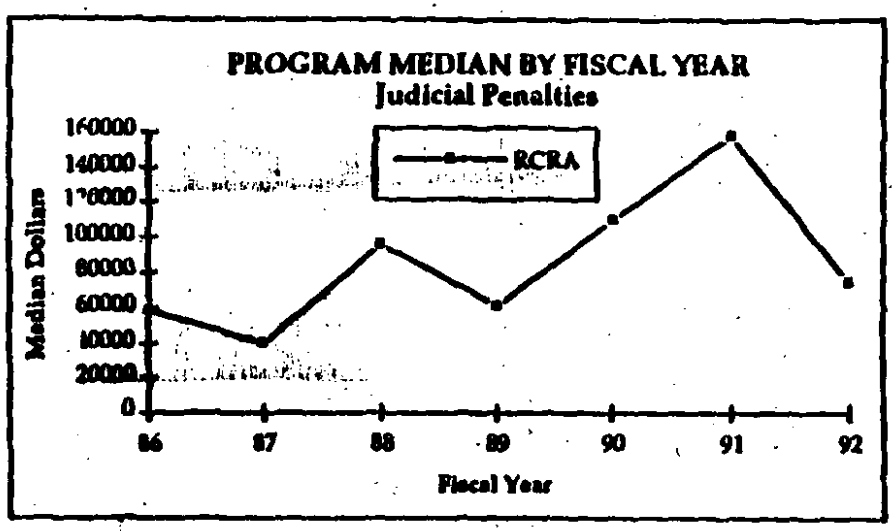
75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92
Fiscal Year


PROGRAM MEDIAN BY FISCAL YEAR
Judicial Penalties
RCRA
Median Dollars
160000
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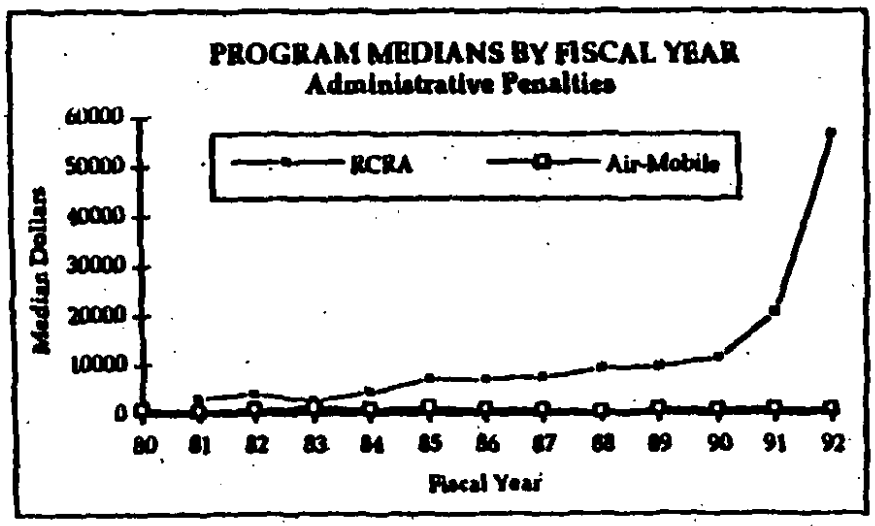
Fiscal Year


PROGRAM MEDIANS BY FISCAL YEAR
Administrative Penalties
RCRA
Air-Mobile
Median Dollars
60000
50000
40000
30000
20000
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80 81 82 83 84 85 86 87 88 89 90 91 92
Fiscal Year

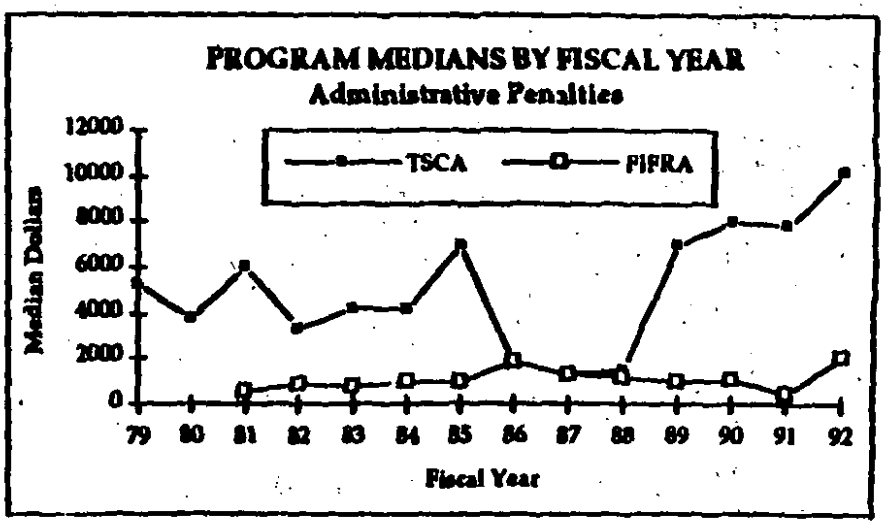
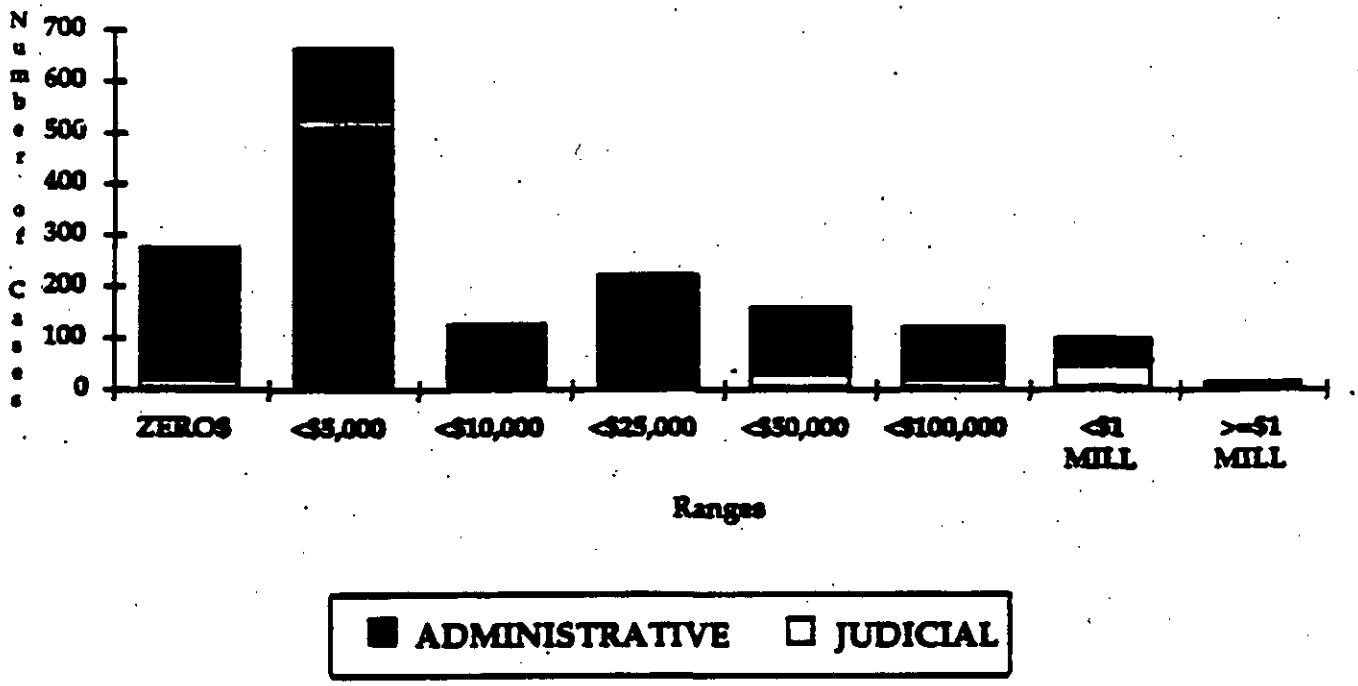

PROGRAM MEDIANS BY FISCAL YEAR
Administrative Penalties
TSCA
FIFRA
Median Dollars
12000
10000
8000
6000
4000
2000
0
79 80 81 82 83 84 85 86 87 88 89 90 91 92
Fiscal Year

FIGURE 6

PENALTY DISTRIBUTION - ALL PROGRAMS
FY 1992



PENALTY DISTRIBUTION - FY 1992
Minus Mobile and FIFRA Administrative

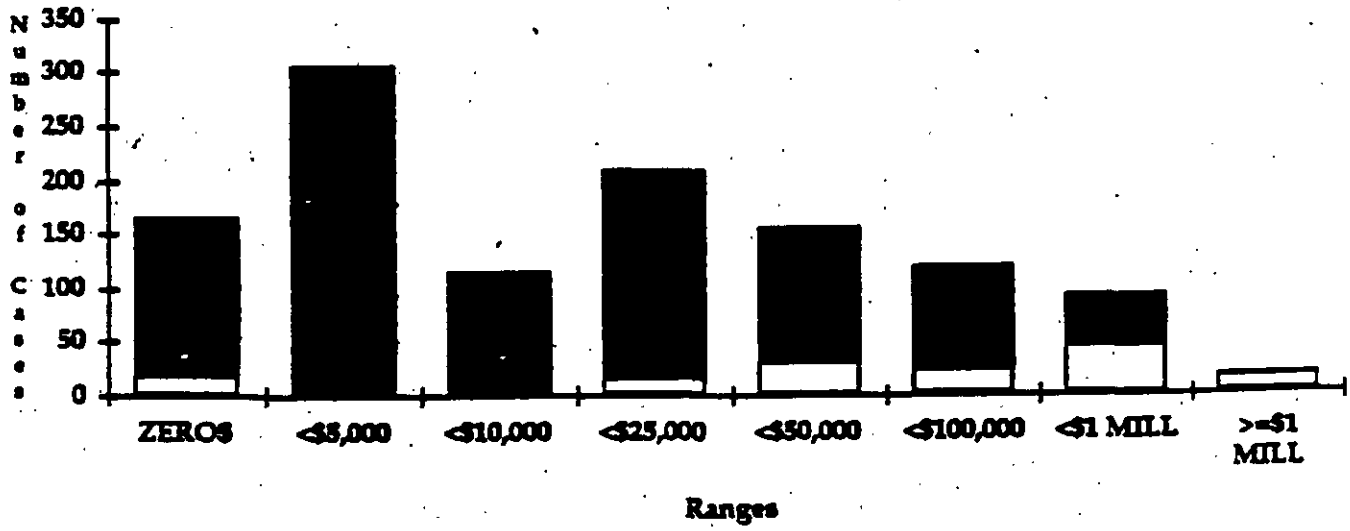


FIGURE 7

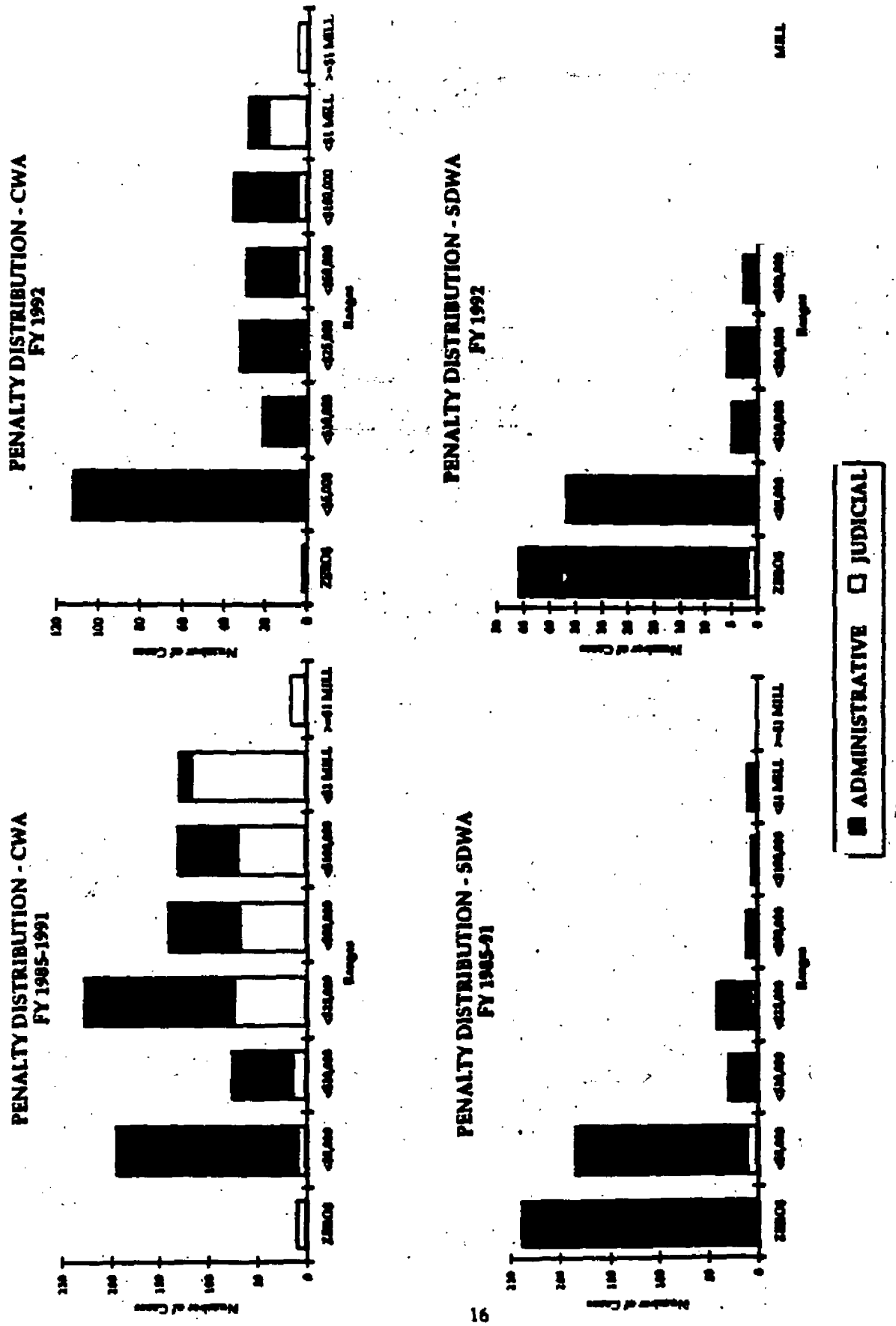
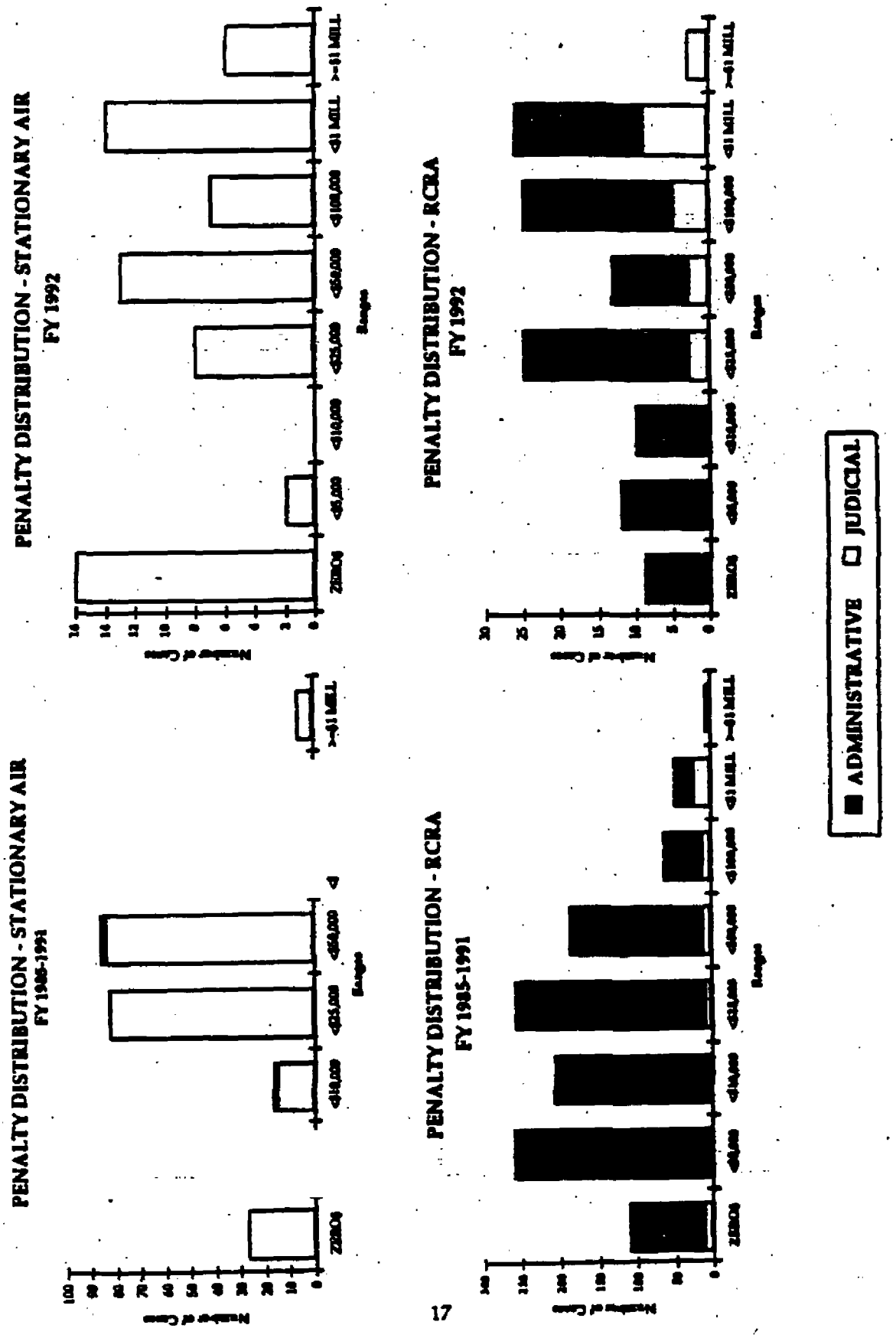

PENALTY DISTRIBUTION - CWA
FY 1992
PENALTY DISTRIBUTION - SDWA
FY 1992
PENALTY DISTRIBUTION - CWA
FY 1985-1991
PENALTY DISTRIBUTION - SDWA
FY 1985-91
Number of Cases
Range
ADMINISTRATIVE
JUDICIAL

FIGURE 8


PENALTY DISTRIBUTION - STATIONARY AIR
FY 1985-1991
PENALTY DISTRIBUTION - STATIONARY AIR
FY 1992
PENALTY DISTRIBUTION - RCRA
FY 1985-1991
PENALTY DISTRIBUTION - RCRA
FY 1992
Number of Cases
Ranges
ADMINISTRATIVE
JUDICIAL

Highest Penalties

Several programs had highest penalties greater than FY 1991. Judicial penalties for Stationary Source and Mobile Source Air programs were higher than in FY 1991. The highest administrative penalties in the EPCRA 302-312, CERCLA 103 and FIFRA programs were higher than FY 1991 levels.

The largest penalty assessed in FY 1992 was $6.7 million obtained in a Stationary Source Air judicial case. This was higher than the largest penalty assessed in FY 1991 (a CWA case for $6,184,220). The second largest penalty was assessed in a RCRA and CWA judicial federal/state case which settled for $3,500,000. Additional programs with highest penalties greater than $500,000 included CWA judicial, CERCLA 104, 106, 107, Mobile Source Air judicial, and TSCA administrative. The highest penalties in each program are shown in Table 5.

Table 5
Highest Penalty in FY 1992 by Program

	Judicial	Administrative
Clean Water Act	$ 2,958,477	$ 125,000
Safe Drinking Water Act	75,000	40,000
Wetlands Protection	300	70,000
Clean Water Act § 311	--	50,000
Marine and Estuarine Protection	--	125,000
Stationary Source Air	6,700,000	90,000
Mobile Source Air	500,000	264,680
RCRA	3,500,000*	900,000
EPCRA § 302-312	--	130,000
CERCLA § 103	--	70,275
CERCLA § 104, 106, 107	1,988,336	--
Toxics Release Inventory	--	102,000
TSCA	5,000	900,000
FIFRA	--	300,000

*This was a RCRA and CWA judicial case which settled for $3,500,000 in a federal/state split ($2 million federal/$1.5 million state).

Types of Cases

About $50.7 million, or 64 percent, of all EPA federal penalty dollars in FY 1992 came from civil judicial cases (up from 56 percent in FY 1991). The remaining $28 million (36 percent) came from administrative cases.

There were more administrative cases than judicial cases. Some 90 percent (1,487) of all cases with penalties were administrative enforcement actions, compared to 10 percent (157 cases) that were judicial actions.

In general, the penalty is likely to be higher in a judicial case than in an administrative case, but the ranges overlap. For instance, among EPA's larger penalties in FY 1992, the highest administrative penalty was $900,000 brought by the RCRA and TSCA programs, and the highest judicial penalty was $6.7 million brought by the Stationary Source Air program.

Considered on an agency-wide basis, the proportions of dollars and cases from the judicial and administrative categories in FY 1992 are similar to those in the past six fiscal years. The percentages within that period varied within a range of 15 percentage points for penalty dollars, and 4 percentage points for cases.*

Criminal Enforcement

The Criminal Enforcement program operates on a cross-media basis, serving all the major programs that have been authorized by Congress to use criminal sanctions against violators. Most criminal cases include charges under more than one environmental law, but for statistical purposes each case is listed under one predominant statute. On this basis, the programs with the largest numbers of fines assessed in FY 1992 were CWA ($39.7 million) and RCRA ($22.9 million).

Relative Contributions

The Clean Water Act program dominated civil penalty dollars in FY 1992, with 29 percent of the total (see Figure 3). It was followed by the Stationary Source Air (25 percent), RCRA (17 percent), TSCA (10 percent), CERCLA 104, 106, 107 (8 percent), Toxics Release Inventory (4 percent) and Mobile Source Air (3 percent) programs.

The majority of cases with penalties in FY 1992 were concluded by programs that made heavy use of administrative cases (see Figure 4): TSCA (20 percent), FIFRA (17 percent), CWA (16 percent), Mobile Source Air (14 percent), and TRI (9 percent).

IV. Supplemental Environmental Projects (SEPs)

Enforcement settlements usually consist of injunctive relief, i.e. the activities needed to correct the violation and return to compliance, as well as a dollar penalty. As part of the settlement process, consent orders and consent decrees also may include additional relief in the form of SEPs. SEPs are environmental activities, undertaken by the violator, which the government could not have required as injunctive relief or other activities needed to correct the violation. The criteria and guidelines for negotiating SEPs are described in the Agency's February 12, 1991 Policy on the Use of Supplemental

*A year-by-year breakdown of penalties can be found in the FY 1992 Enforcement Accomplishments Report.

Environmental Projects in Enforcement Settlements The size of the final assessed penalty may reflect the commitment of the defendant/respondent to undertake SEPs.[1]

The five general categories of eligible SEPs described in the February 12, 1991 Policy are Pollution Prevention, Pollution Reduction, Environmental Restoration, Environmental Auditing, and Public Awareness projects. A sixth EPCRA program-specific category consisting of support to Local Emergency Planning Committees (LEPCs) was subsequently adopted.

The Regions provided information on 222 SEPs negotiated as part of enforcement settlements during FY 1992. In addition, the national Mobile Sources Air program (OMS) negotiated another 187 SEPS during FY 1992, almost all in the Public Awareness category.[2] Table I presents a summary of the data broken down by compliance program and SEP category.

The "estimated cost" column represents the Region's attempt to value the cost of implementing the SEP by the defendant/ respondent. The "estimated cost" of a SEP is based upon a number of potential factors, including construction costs, O&M costs, and the time needed to construct the project. Therefore, while these costs are included for illustrative purposes, they cannot be as "definitive" as are the direct penalty dollars which are reviewed in the first section of this report. (Cf discussion below).

A total of 409 SEPs were negotiated for all programs in FY 1992. The estimated dollar value of those SEPs is approximately $50.1M.

A. SEP CATEGORY REVIEW

As Chart 1 shows, the Mobile Sources Program made the most extensive use of SEPs. MOB negotiated approximately 47% of all FY 1992 SEPs, followed by the EPCRA and TSCA programs (both with 20%). As Chart 2 shows, due to the influence of the OMS program, almost one-half of all the SEPs negotiated during FY 1992 (48%) involved Public Awareness projects.

Chart 3A and 3B show the distribution of SEPs when OMS cases are excluded from the analysis. Fifty-two percent of the remaining SEPs involved Pollution Reduction and another 28% involved Pollution Prevention. These two dominant categories were followed by Environmental Auditing (9%)

[1] See the February 12, 1991 Policy on the Use of Supplemental Environmental Projects in Enforcement Settlements for a full discussion of the criteria and restrictions on the use of SEPs. Even when a SEP is part of the settlement, the final dollar penalty must at minimum reflect the economic benefit of noncompliance.

See final consent orders and decrees for complete descriptions of SEPs. Some of the significant SEPs also are described in Chapter III of the FY 1992 Enforcement Accomplishments Report.

[2] 183 of the 187 SEPS negotiated by OMS were public awareness projects. OMS makes extensive use of Public Awareness projects as part of settlements dealing with tampering or fuel switching violations. In order to discern patterns which may otherwise be obscured by the large number of these settlements, some of the following analysis will exclude mobile source SEPs, as noted.

CHART 1

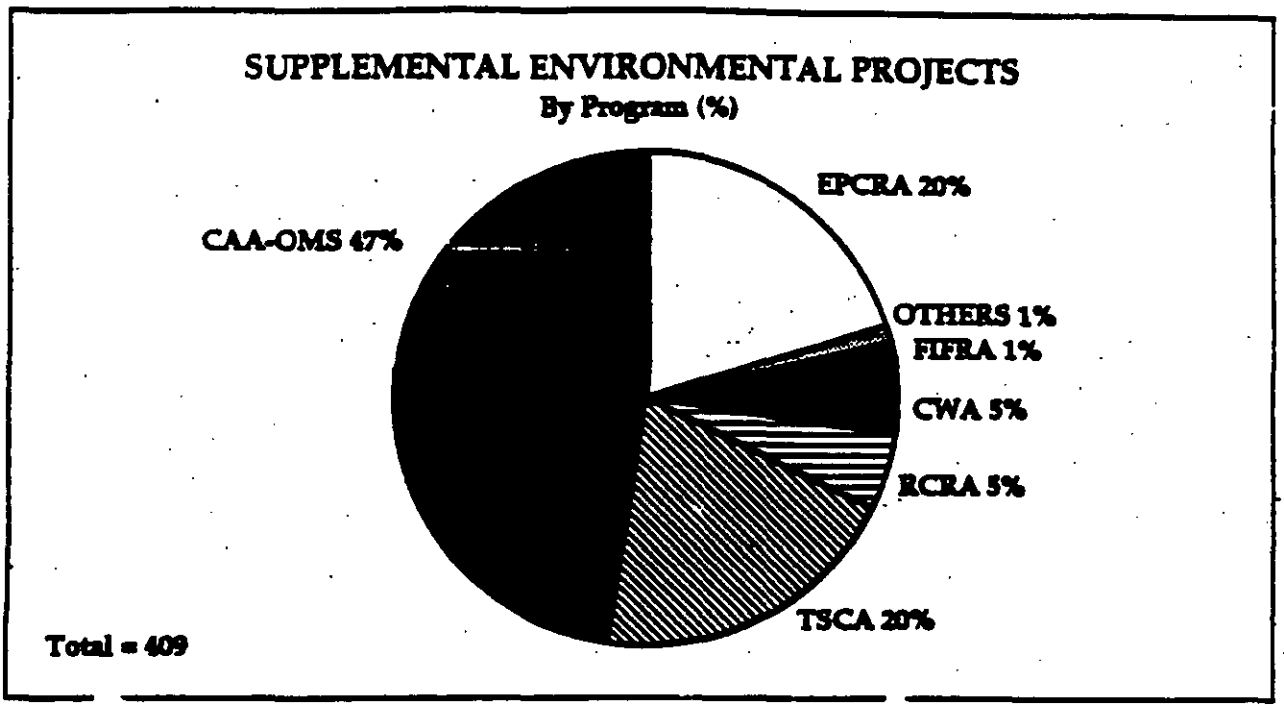


CHART 2

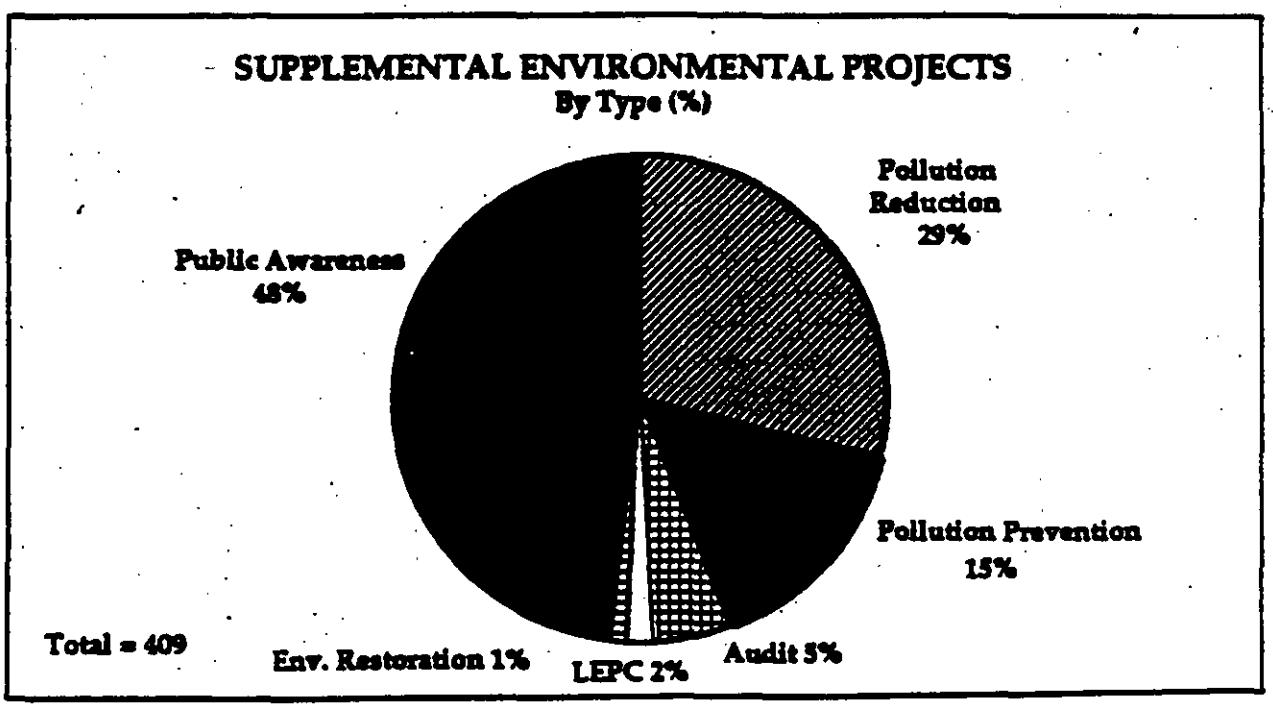


CHART 3A

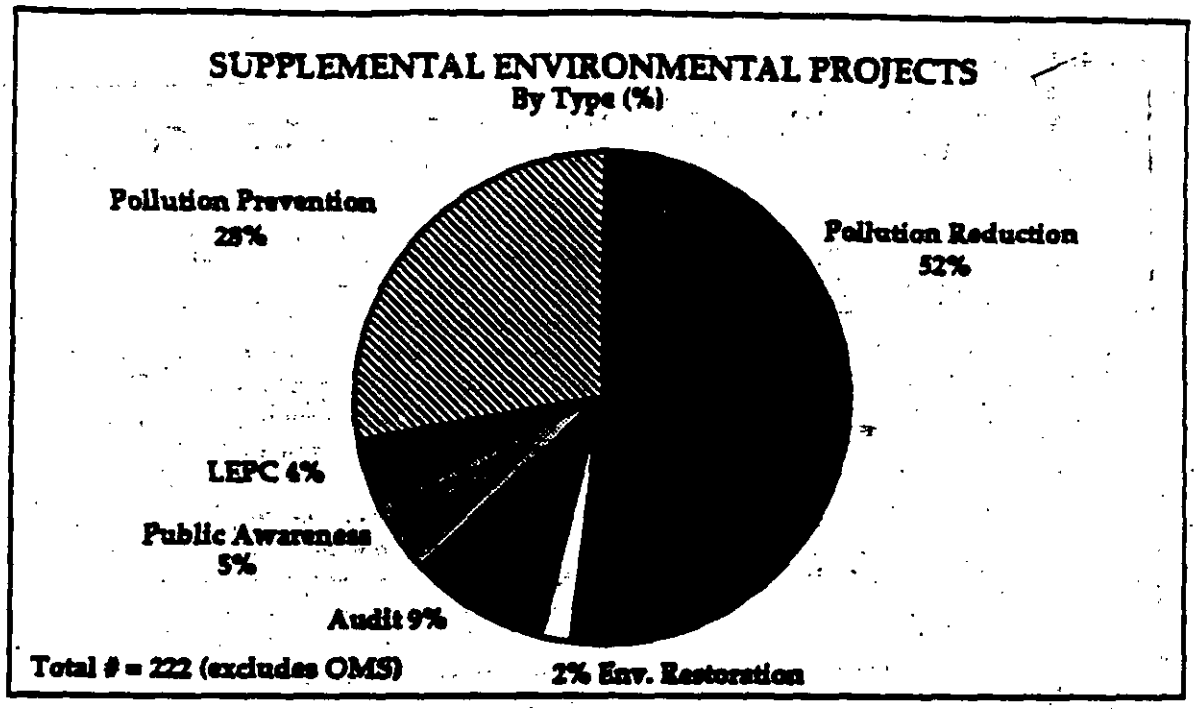
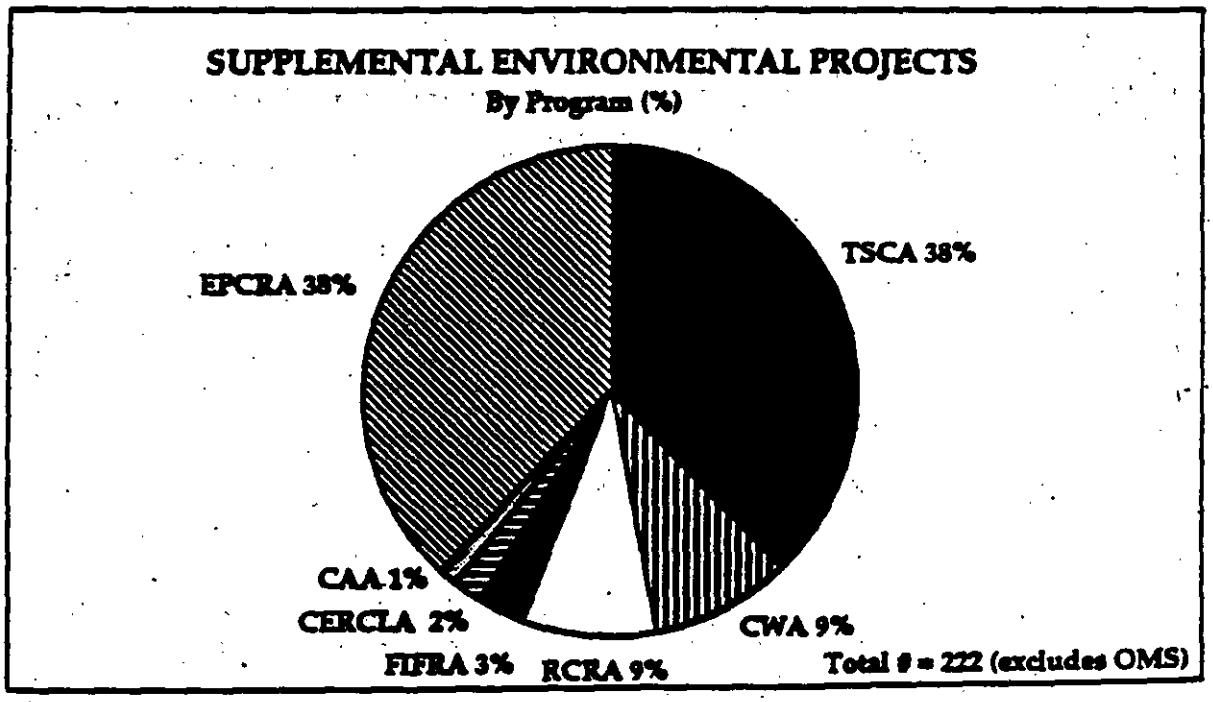


CHART 3B



support for Local Emergency Planning Committees (4%) and Environmental Restoration (2%).[3] Public Awareness projects comprise only 5% of the SEPs negotiated by the other compliance programs.

Chart 4 shows the estimated value of SEPs by category. Pollution Prevention SEPs had an estimated dollar value of almost $15.7M (31%) and Pollution Reduction SEPs had an estimated dollar value of over $29.7M (59%). The total estimated values for the other categories of SEPs were a little over $3M for Environmental Audits (6%); almost $1.1M for Environmental Restoration (2%); $534.5K for Public Awareness (1%, of which $411.8K were for OMS SEPs); and just over $72K in support for Local Emergency Planning Commissions (<1%).[4]

The Agency's Pollution Prevention Strategy highlights source reduction as the "preferred" method of environmental management.[5] Chart 5 breaks down the specific types of source reduction activities: Input Chemical Substitution (34%), Closed-Loop Recycling (22%), New Equipment (18%), and Process Change (25%). The Regions also provided partial estimates of the environmental impact of the SEPs (e.g., the amount of high toxic solvents replaced with lower toxic solvents, the reduction pollutant loadings (either emissions or discharges, etc.). While such data was not available for every SEP, Chart 6 summarizes the known reductions secured through Pollution Prevention SEPs.

B. PROGRAM REVIEW

As previously noted, OMS negotiated 47% of all SEPs negotiated in FY 1992. As Chart 3B indicates, when OMS cases are excluded, the EPCRA and TSCA programs tied for the majority of SEPs with 38% each, followed by the RCRA and CWA programs, each with 9%. FIFRA (3%), Stationary Air (1%), and CERCLA (2%) comprise the remaining SEPs.

There were clear programmatic differences regarding the categories of SEPs negotiated. EPCRA-313 (84%) dominates the Pollution Prevention SEP category; a logical result given that program's emphasis upon securing compliance with Toxic Release Inventory (TRI) requirements. A majority of Pollution Reduction SEPs (55%) were negotiated pursuant to TSCA settlements, primarily for the "accelerated compliance" removal of PCB-laden transformers and other equipment. Three of the four (75%) Environmental Restoration Projects were negotiated as part of CWA settlements, and 15 of the 19 (79%) Environmental Audit SEPs were negotiated by the TSCA program in order to identify potential asbestos hazards under AHERA.

As Chart 7 indicates, TSCA SEPs ($23.8M) accounted for 47% of the estimated value of all FY 1992 SEPs, followed by EPCRA ($10M, 20%), CWA ($6.5M, 13%), CAA-Stationary ($4.9M, 10%), and RCRA ($4.1M, 8%). CAA-MOS, FIFRA and CERCLA combined for about 1%.

[3] As Table 1 indicates, OMS emphasizes a large number of SEPs with relatively small associated costs. The total estimated value of their 183 Public Awareness SEPs was a little less than $412K. Therefore, excluding OMS cases from subsequent analysis has a greater impact on the distribution of SEP categories than on the total dollars associated with them.

[4] Excluding Mobile Sources programs, the other compliance programs had a total estimated value of $49.5M. Since OMS deals with a large volume of smaller penalties, it has greater impact on the total number of SEPs negotiated by the Agency than on the estimated value of those SEPs.

[5] See the May 28, 1992 Memorandum of Deputy Administrator Habicht for the Agency-wide definition of Pollution Prevention.

CHART 4

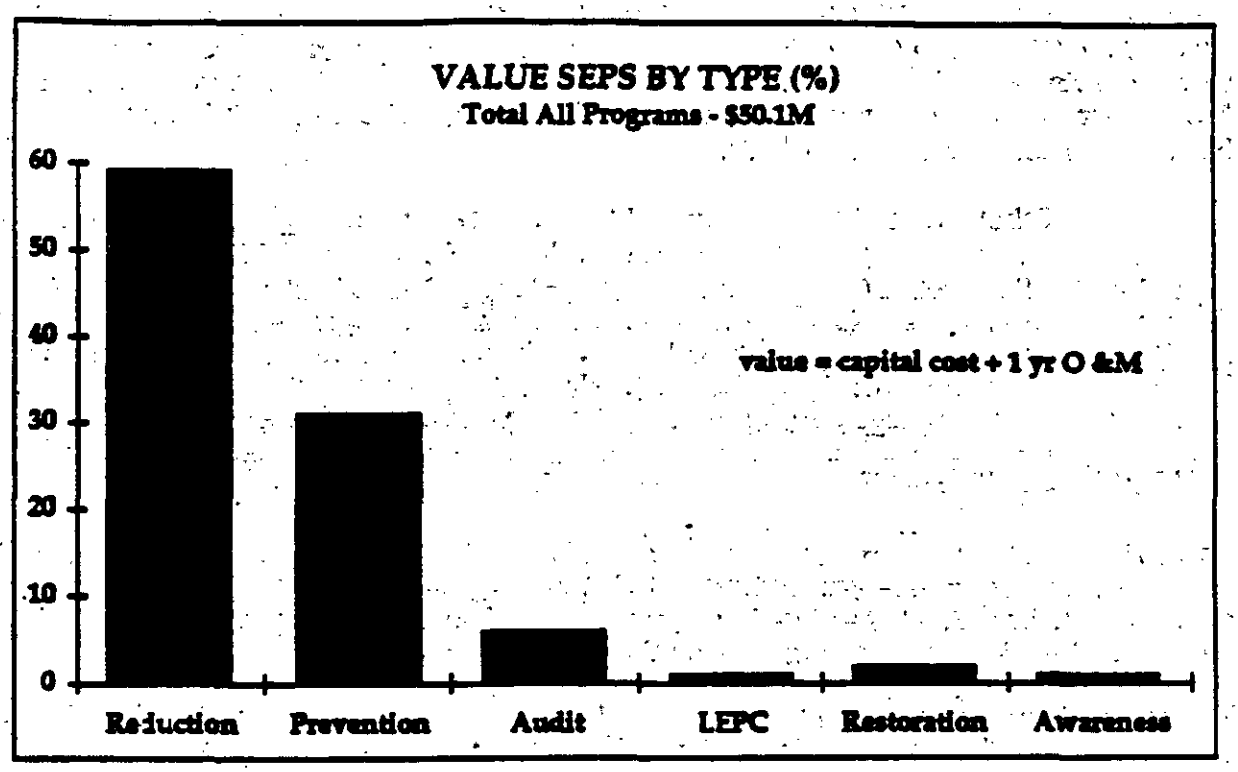
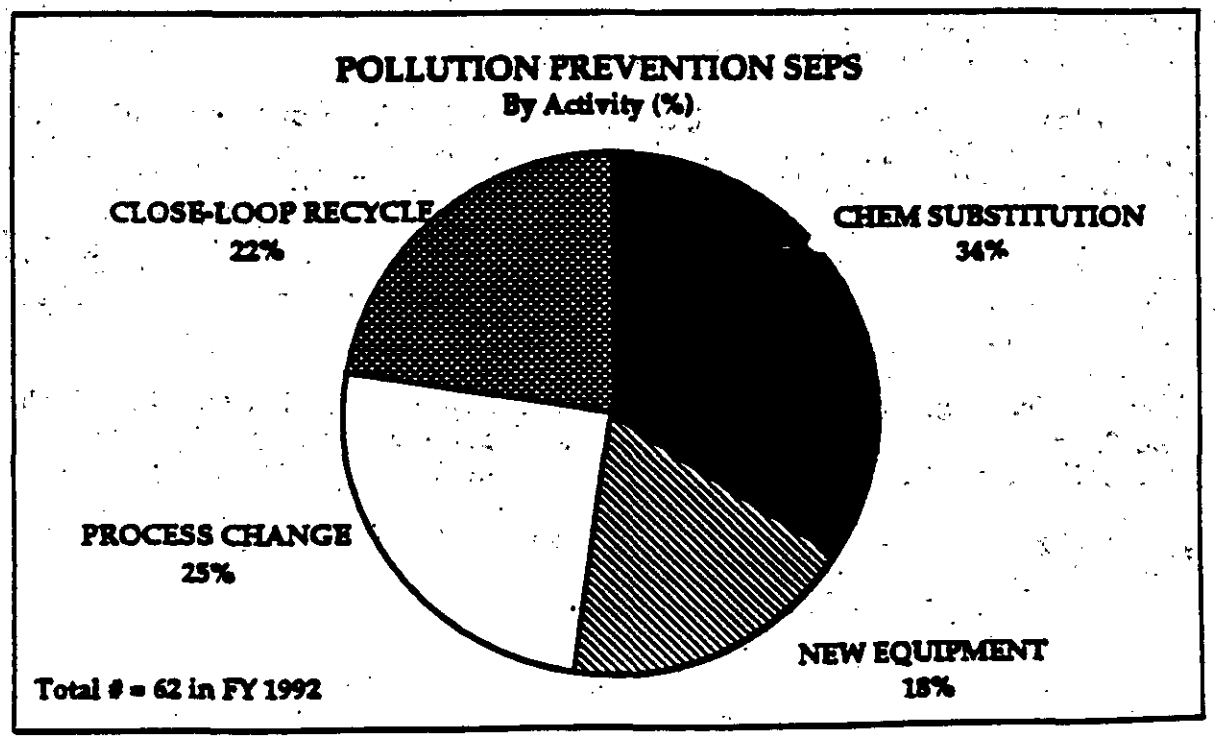


CHART 5



PROGRAM	CATEGORY		ESTIMATED COST
	Aware	(1)	21,000
		(82)	($23,793,500)
CAA (SSCD)	P2	(1)	$4,000,000
	PR	(1)	950,000
	Audit	(0)	
	Restore	(0)	
	LEPC	(0)	
	Aware	(0)	
		(2)	($4,950,000)
CAA (OMS)**	P2	(0)	
	PR	(4)	151,020
	Audit	(0)	
	Restore	(0)	
	LEPC	(0)	
	Aware	(183)	411,831
		(187)	($562,851)
RCRA***	P2	(6)	$1,133,000
	PR	(7)	2,752,700
	Audit	(1)	80,000
	Restore	(1)	101,000
	LEPC	(2)	26,470
	Aware	(4)	14,500
		(21)	($4,107,670)
CWA	P2	(2)	$ 609,000
	PR	(10)	4,795,581
	Audit	(3)	176,300
	Restore	(3)	973,000
	LEPC	(0)	
	Aware	(1)	18,000
		(19)	($6,571,881)
FIFRA	P2	(0)	$
	PR	(8)	71,800
	Audit	(0)	
	Restore	(0)	
	LEPC	(0)	
	Aware	(3)	10,200
		(11)	($82,000)

PROGRAM	CATEGORY		ESTIMATED COST
CERCLA	P2	(0)	
	PR	(1)	9,000
	Audit	(0)	
	Restore	(0)	
	LEPC	(3)	$ 27,310
	Aware	(1)	--
		(5)	($36,310)
		(409)	($50,111,800)

* EPCRA cases include 6 non-section 313 (TRI) SEPs

** OMS includes 1 MOD SEP; all others are POSD

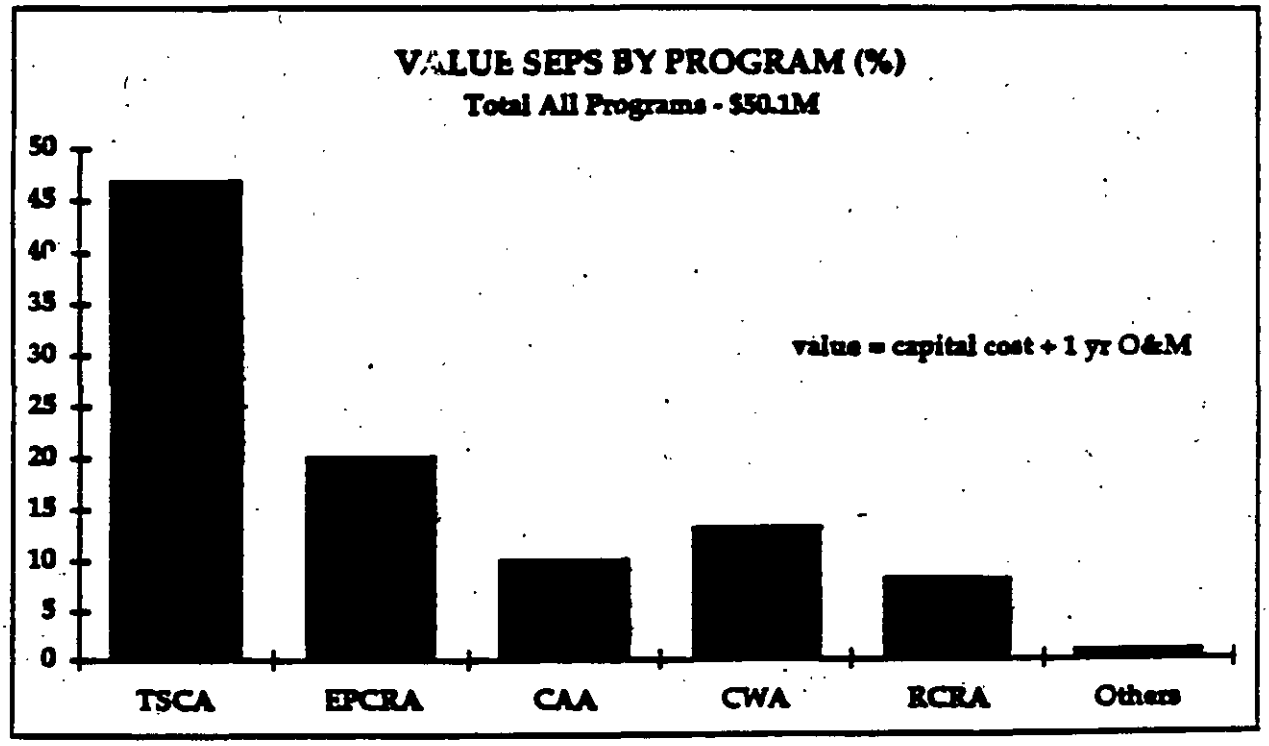
*** RCRA cases include 2 SPCC SEPs and 1 UST SEP

CHART 6

CHEMICALS IN P2 SEPS
APPROXIMATE AMOUNT REDUCED/ELIMINATED

1,1,1 TCE* (10)	>185,400 lbs/yr (5)
TOLUENE* (10)	> 87,300 lbs/yr (6)
MEK* (8)	>30,000 lbs/yr (3)
XYLENE* (7)	>32,855 lbs/yr (2)
SULFURIC ACID (6)	>8,850 lbs/yr (1)
FREON (6)	>8,730 gal/yr (1)
ACETONE (4)	> 250,000 lbs/yr (1)
VOCs (5)	>8,500 lbs/yr (1)
AMMONIA (2)	>1,500,000 lbs/yr (1)
CHROMIUM* (1)	N/A

CHART 7



It should be noted that a small number of SEPs with an estimated value of over $1M skew the arithmetic mean ("average") cost upward to approximately $225K/SEP). The range of cost estimates for the SEPs (excluding OMS) presents a different picture:

<5K = 10%	101K - 250K = 14%
5.1K -10K = 13%	250.1K -500K = 8%
10.1K - 25K = 14%	500.1K - 750K = 3%
25.1K - 50K = 14%	750.1K - 1M = 3%
50.1K - 100K = 17%	>1M = 4%

Cumulatively, 10% of the SEPs have an estimated cost of under $5K, 23% under $10K, 37% under $25K, and 68% under $100K. By contrast, only 4% have an estimated value of over $1M.

NEXT STEPS

As previously noted, FY 1992 was the first year that the Agency systematically compiled SEP data. Each Region used its own methodology for their estimates of the costs of implementing the SEPs (e.g., capital costs, interest rates, single vs. multi-year implementation, etc.). Therefore, while the cost estimates are useful for providing an overall "snapshot" of the cumulative impact of SEPs, a standard methodology is needed to help make sure that all Regions value their projects similarly.

The Enforcement Management Council (EMC) has authorized an Agency-wide workgroup to develop a standardized methodology for estimating the value of SEPs. The workgroup will complete this assignment during the last half of FY 1993, so that subsequent annual SEP reports will be comprehensive, accurate and consistent from Region to Region.

Table I

Total SEPS/Category of SEP By Program

(The SEP Category Abbreviations are: P2 = Pollution Prevention; PR = Pollution Reduction; Audit = Environmental Auditing; Restore = Environmental Restoration; LEPC = Support for Local Emergency Planning Committees; Aware = Public Awareness Projects)

PROGRAM	CATEGORY		ESTIMATED COST
EPCRA*	P2	(52)	$8,018,981
	PR	(22)	1,896,302
	Audit	(1)	15,000
	Restore	(0)	
	LEPC	(5)	18,300
	Aware	(2)	59,000
		(82)	($10,007,600)
TSCA	P2	(1)	$ 1,930,000
	PR	(66)	19,086,120
	Audit	(14)	2,756,385
	Restore	(0)	
	LEPC	(0)	